No. 3081

United States Circuit Court of Appeals

For the Ninth Circuit

MINERALS SEPARATION, LTD., ET AL,

Appellees,

vs.

BUTTE & SUPERIOR MINING COMPANY,

Appellant.

Transcript of Record

Volume 1

(Pages i to ccxxx)

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

McKee Ptg. Co., Butte, Mont.

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(Names and Addresses of) Attorneys of Record.

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Solicitors and of Counsel for Complainants and Appellees.

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MR. J. BRUCE KREMER, Butte, Montana.
MR. L. P. SANDERS, Butte, Montana.
MR. ALF. C. KREMER, Butte, Montana.
Solicitors and of Counsel for Defendant and Appellant.

In the District Court of the United States for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, AND MINERALS SEPARATION NORTH AMERICAN CORPORATION,
Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,
Defendant.

BE IT REMEMBERED, That on the 10th day of October, 1913, a Bill of Complaint was filed herein, which said bill is in the words and figures as follows, to-wit:

UNITED STATES DISTRICT COURT,
DISTRICT OF MONTANA.

MINERALS SEPARATION, LIMITED, Plaintiff, vs. BUTTE & SUPERIOR COPPER COMPANY, LIMITED, Defendant.	IN EQUITY. **BILL OF COMPLAINT**

The plaintiff for its Bill of Complaint alleges:

1. That the plaintiff is a corporation duly organized and existing under and by virtue of the Laws of Great Britain and an inhabitant of Great Britain, and having its principal office in London, England; and that, on information and belief, the defendant is a corporation duly organized and existing under the Laws of the State of Arizona and has a regular and established place of business in the City of Butte, Silver Bow County, State of Montana, where it has commited acts of infringement hereinafter complained of.

2. That this suit is brought under the patent laws of the United States for the infringement of United

States Letters Patent No. 835,120, issued November 6, 1906, for improvements in Ore Concentration.

3. That on the 29th day of May, 1905, Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, being within the meaning of the statutes of the United States then in force the original, first and joint inventors of a certain new and useful process of ore concentration, and being entitled to a patent thereon under the provisions of said statutes, duly filed in the United States Patent Office an application for Letters Patent for the said invention, and that on the 6th day of November, 1906, all of the requirements of the statutes then in force having been duly complied with, the said Letters Patent of the United States No. 835,120 were duly issued on said application to the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, which Letters Patent, or a duly certified copy thereof, the plaintiff will produce as this Court may direct.

4. That on or about the 7th day of December, 1909, the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot duly assigned to the plaintiff all right, title and interest in and to the said invention and Letters Patent, and that the plaintiff is now the sole owner of the said invention and Letters Patent, and of all right of action, claim and demand for infringement thereof since said assignment.

5. That the said invention is of great value and utility, and that the plaintiff has been to great trouble

and expense in demonstrating the utility thereof and in introducing the same into extensive commercial use in the United States and elsewhere, and that the plaintiff has granted numerous licenses for carrying on said process of ore concentration in the United States and elsewhere and said process has been and is now being extensively carried on in the United States and elsewhere and that the plaintiff is able and willing to supply the entire demand for the use of said invention by granting licenses for the use of the same conditioned on the payment of royalties measured by the output of the said process of ore concentration.

6. That the defendant has infringed the said Letters Patent since the plaintiff acquired the same, by installing apparatus for and carrying on the use of the said process of ore concentration at the town of Basin, in the County of Jefferson, State of Montana, and at the City of Butte, Silver Bow County, State of Montana, without the consent or allowance of the plaintiff, the said process of ore concentration so carried on by the defendant embodying the said invention as claimed in claims 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12 of said Letters Patent, and that the defendant is carrying on said infringement at the last named place as a continuing act and threatens to continue so to infringe.

7. That the plaintiff and another, on or about October 9, 1911, brought suit in this Court against James M. Hyde for infringement of said Letters Patent No. 835,120, and that said suit was fully contested on

its merits and presented at length to this Court on the briefs and arguments of counsel and that this Court, in an opinion filed July 26, 1913, this Court having jurisdiction of the persons and subject matter in said suit, directed that an interlocutory decree be entered adjudging the validity of said Letters Patent and infringement thereof by the said defendant James M. Hyde as to the particular claims above charged to be infringed by the defendant herein, and directing the issuance of an injunction restraining further infringement, and a reference to a master for ascertaining profits and damages, and that on or about August 15, 1913, a decree was entered as thus directed by this Court and further proceedings have been had in accordance therewith, including the issuance of a permanent injunction restraining further infringement of said Letters Patent No. 835,120.

8. On information and belief, that the defendant herein confederated with the said James M. Hyde in the acts of infringement complained of in the said suit against the said James M. Hyde and was an actual defendant therein, and conducted the defense of said suit and paid all the expenses thereof and paid the said James M. Hyde for his services in assisting in the defense of the said suit; that the acts decreed in the said suit to be acts of infringement were carried on under certain Letters Patent issued to said James M. Hyde on April 2, 1912, No. 1,022,085, and that since the commencement of said suit the said James M. Hyde assigned to the defendant herein all of the right,

title and interest of the said James M. Hyde in, to and under his said Letters Patent No. 1,022,085, for, to and in the County of Silver Bow and State of Montana; that the acts decreed in the said suit to be acts of infringement were carried on in the mill of the defendant herein and by the employees of the defendant herein and have been continued by the defendant herein in the identical apparatus used by the said James M. Hyde; and that this defendant is a joint tort feasor with the said James M. Hyde in the acts thus decreed to be infringements and is in privity with the said James M. Hyde and is bound by the said decree against the said James M. Hyde.

9. On information and belief, that, prior to the commencement of the said suit against James M. Hyde, the plaintiff caused the defendant in the present suit to be notified of the rights of the plaintiff under said Letters Patent No. 835,120, and that the defendant in this suit was duly advised of the proceedings in said suit as aforesaid, and, as will appear by the records of this Court, that the permanent injunction, above referred to, issued pursuant to said decree against the said James M. Hyde, was directed to the said James M. Hyde, his confederates and associates, and, with a copy of the said decree directing the issuance of said injunction, has been served upon the defendant in the present suit, but, nevertheless, the defendant has continued to infringe the said Letters Patent in defiance of the decree of this Court and of the injunction issued

thereon and to its own profit and to the damage of the plaintiff.

The plaintiff therefore prays:

I. For a permanent injunction and a preliminary injunction pending the determination of this suit, restraining the defendant, its confederates, associates, officers, servants, agents, clerks and workmen from any installation or use in any manner of the said patented invention, and particularly claims 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12 thereof, or any part thereof, in violation of the rights of the plaintiff as aforesaid, and from encouraging and inducing others to infringe the said Letters Patent, and from defending other infringers of said Letters Patent or reimbursing them the expense of defending against said Letters Patent, in whole or in part, or otherwise aiding or abetting others to install or use processes of ore concentration in infringement of said Letters Patent.

II. For costs and for an accounting of profits and damages, and that any damages assessed may be tripled.

III. For such other and further relief as the circumstances of the case may require.

MINERALS SEPARATION, LTD.
By S. Gregory, Director.

O. W. McCONNELL,
Solicitor for Complainant.
HENRY D. WILLIAMS,
of Counsel.

STATE OF NEW YORK,

COUNTY OF NEW YORK,—ss.

SETH GREGORY, being duly sworn, deposes and says that he is a director of Minerals Separation, Limited, the plaintiff named in the foregoing Bill of Complaint; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true; and that he verily believes that Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot were the true, first, original and joint inventors of the invention set forth and claimed in the Letters Patent referred to in the Bill of Complaint.

S. GREGORY.

Subscribed and sworn to before me
this 2nd day of October, 1913.

GEO. W. SIMERS, Jr.,
Notary Public,
N. Y. Co.

No. 3529.

(SEAL.)

FILED: October 10, 1913.
GEO. W. SPROULE, Clerk.

And thereafter on October 15th, 1913, subpoena duly served on defendant was filed, being as follows, to-wit:

UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES,
DISTRICT OF MONTANA.

IN EQUITY.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, GREETING:

TO BUTTE & SUPERIOR COPPER COMPANY, LIMITED,

Defendant.

YOU ARE HEREBY COMMANDED, That you be and appear in said District Court of the United States aforesaid, at the Court Room in Federal Building, Butte, Montana, on the 30th day of October, 1913, to answer a Bill of Complaint exhibited against you in said Court by Minerals Separation, Limited, Complainant, who is a citizen of Great Britain, and having its principal office in London, England, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the HONORABLE GEO. M. BOURQUIN, Judge of the District Court of the United States for the District of Montana, this 10th day of

October, in the year of our Lord one thousand nine hundred and thirteen and of our Independence the 138th.

GEO. W. SPROULE, Clerk.
By C. R. GARLOW, Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12, SUPREME COURT, U. S.

YOU ARE HEREBY REQUIRED, to file your answer or other defense in the Clerk's office of said court on or before the twentieth day after service, excluding the day hereof; otherwise the bill may be taken pro confesso.

GEO. W. SPROULE, Clerk.
By C. R. GARLOW, Deputy Clerk.

O. W. McCONNELL, Esq.,
Solicitor for Complainant,
Helena, Montana.

HENRY D. WILLIAMS, Esq.,
Of New York City, N. Y. of Counsel.

(COURT SEAL.)

UNITED STATES OF AMERICA,

DISTRICT OF MONTANA.

I hereby certify and return that I received the within Subpoena in Equity together with copy of bill of complaint, on the 13th day of October, 1913, and that on the same day I served the same on the Butte Superior Copper Company, Limited, by delivering to and leaving with J. Bruce Kremer, statutory agent for service of Defendant Company, a true copy of said Subpoena in Equity, together with a true copy of bill of complaint, notice, and of affidavits of Joseph C. Pyle, H. N. Line, Thomas H. Smith, Ernest O. Jacobson, Charles F. Chandler, Floyd J. Metzger & Henry D. Williams, in said action, at Butte, Silver Bow County, in said District.

Dated this 13th day of October, 1913.

WILLIAM LINDSAY,
United States Marshal.

By GEORGE A. McKAY,
Deputy.

FILED: Oct. 15th, 1913.
GEO. W. SPROULE, Clerk.

And thereafter on the 28th day of October, 1913, the answer of defendant was filed, being as follows, to-wit:

In the District Court of the United States for the District of Montana.

MINERALS SEPARATION, LIMITED,
Plaintiff,
vs.
BUTTE & SUPERIOR COPPER COMPANY, Limited
Defendant.

IN EQUITY.
ANSWER.

The answer of the Butte and Superior Copper Company, Limited, defendant, to the bill of complaint of plaintiff, Minerals Separation, Limited.

The defendant now and all times saving and reserving unto itself all and all manner of benefit and advantage of exception which can or may be had or taken to the errors, uncertainties or other imperfections contained in the bill of complaint herein, for answer hereto, or to so much or such parts thereof as it is advised it is material to make answer unto, says as follows:

I.

This defendant admits that plaintiff is a corporation duly organized and existing under and by virtue of the laws of Great Britain and an inhabitant of Great Britain, and has its principal office in London, England. Admits that the defendant is a corporation duly organized and existing under the laws of the State of Arizona, and has a regular and established place of business in the City of Butte, Silver Bow County, State of Montana. Denies that it has committed acts or any act of infringement at said place, or at any other place, or at any time, or at all, as alleged in plaintiff's bill of complaint, or otherwise.

II.

Admits that this suit is brought under the patent laws of the United States for the alleged infringement of United States Letters Patent No. 835,120, issued November 6th, 1906, for alleged improvements in ore concentration; but denies that there has been any infringement thereof by this defendant.

III.

Denies that on the 29th day of May, 1905, or at any other time, Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot were, within the meaning of the statutes of the United States then in force, the original or first or joint inventors, or that either of them was, or that any of them were the original or first or joint inventors of a certain new or

useful process of ore concentration, or were entitled to a patent thereon under the provisions of said statutes, or that they duly filed in the United States Patent Office an application for Letters Patent of said alleged invention; denies that on the 6th day of November, 1906, all of the requirements of the statutes having been duly complied with, the said Letters Patent of the United States No. 835,120 were duly issued on said application to the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, or either, or any of them; admits that a certain alleged patent, being No. 835,120, was issued to Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot.

Denies each and every allegation contained in paragraph 3 of plaintiff's bill of complaint not hereinbefore specifically admitted or denied.

IV.

Denies that it has any knowledge or information as to whether on or about the 7th day of December, 1909, the said Henry Linvingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot duly or at all assigned to the plaintiff all right, title and interest in and to said alleged invention and alleged Letters Patent, or that plaintiff is now the sole owner of said alleged invention or Letters Patent, or of all rights of action, or claim, or demand for alleged infringement thereof since said alleged assignment.

V.

Defendant denies that said alleged invention is of great value or utility; denies that there was or is any invention in the said alleged patent No. 835,120; denies that it has any knowledge or information as to whether the plaintiff has been to great trouble or expense in demonstrating the alleged utility thereof, or in introducing the same into extensive commercial use in the United States or elsewhere; denies that it has any knowledge or information as to whether the plaintiff has granted numerous licenses for carrying on said alleged process of ore concentration in the United States or elsewhere; denies that said alleged process has been or is now being extensively carried on in the United States, or elsewhere; denies that plaintiff has any patent upon any alleged process, and denies that plaintiff has the right to grant licenses for the use of said alleged process conditioned on the payment of royalty measured by the output of said alleged process of ore concentration, or otherwise, or at all.

Denies each and every allegation contained in paragraph 5 of plaintiff's bill of complaint not hereinbefore specifically admitted or denied.

VI.

Answering the allegations contained in paragraph 6 of plaintiff's bill of complaint, this defendant denies that it has infringed or is infringing the said alleged Letters Patent since the plaintiff acquired the same or any other time, or at all, by installing apparatus for

or carrying on the use of said alleged process of ore concentration, or in any other manner, or at all, at the town of Basin, in the County of Jefferson, State of Montana, or at the City of Butte, Silver Bow County, State of Montana, or at any other place, or at all, without the consent or allowance of the plaintiff, or at all; denies that said alleged process of ore concentration alleged to have been carried on by this defendant embodied the said alleged invention as claimed in claims one (1), or two (2), or three (3), or five (5), or six (6), or seven (7), or nine (9), or ten (10), or eleven (11), or twelve (12), or any other claim of said alleged Letters Patent; denies that the defendant is carrying on any alleged infringement at the last named place, or at any other place, or at all, as a continuing or any act or threatens to continue to use said process or to infringe or threatens to infringe at all; denies that defendant has ever infringed said alleged patent.

VII.

Answering the allegations contained in paragraph 7 of plaintiff's bill of complaint, defendant admits that the plaintiff and another, on or about October 9th, 1911, brought suit in this court against James M. Hyde for alleged infringement of said Letters Patent No. 835,120, but denies that said suit was fully contested on its merits, but admits that said suit was presented at length to this Court on briefs and arguments of counsel; admits that this Court, in an opin-

ion filed July 26th, 1913, the Court having jurisdiction of the persons and subject matter in said suit, directed that an interlocutory decree be entered ~~and~~ ad judging the validity of said Letters Patent as against James M. Hyde, and infringement thereof by said James M. Hyde, as to the particular claims herein charged to be the subject of the alleged infringement by the defendant herein; but denies that there was an adjudication of the validity of said Letters Patent as against this defendant, or that this defendant was in any manner affected by or was in any manner a party to the said alleged suit above referred to; admits that the above styled Court directed the issuance of an injunction restraining from alleged further infringement by the said James M. Hyde and a reference to a master for ascertaining profits and damages to be awarded against the said James M. Hyde, and admits that on the 15th of August, 1913, a decree was entered as directed by the said Court and that thereafter, a permanent injunction restraining the said James M. Hyde from further alleged infringement of said Letters Patent No. 835,120 was issued by the above Court. This answering defendant states that thereafter, and after the entry of said decree, James M. Hyde, the defendant in the said action above referred to, duly and regularly in compliance with the laws governing such matters and in compliance with the rules of this Court and all other Courts having jurisdiction over the said action, duly and regularly perfected an appeal in the case of the above-mentioned

plaintiff and another against the said James M. Hyde, and that said appeal was duly and regularly allowed by a Judge of the Circuit Court of Appeals, of the Ninth Circuit, and that said action above referred to is now on appeal, and that the said cause will shortly be presented to the said Circuit Court of Appeals of the Ninth Circuit for final adjudication and hearing; and defendant further avers that the said patent in suit by reason of said appeal to the said Circuit Court of Appeals has not been within the meaning of the law adjudicated and that the rights of the said plaintiff above-named and the said James M. Hyde to the use of the alleged process has not been fully determined and designated by the Circuit Court of Appeals.

Further answering the allegations contained in paragraph 7, this defendant denies each and every allegation contained therein not hereinbefore specifically admitted or denied.

VIII.

Answering the allegations contained in paragraph 8 of plaintiff's bill of complaint, this defendant denies that it confederated with the said James M. Hyde, or any other person, or at all, in the alleged acts of infringement, or any act of infringement complained of in the said alleged suit against the said James M. Hyde, or at all; denies that it was an actual defendant therein, or a defendant therein at all; denies that it conducted the defense of said suit and denies that it paid all the expenses thereof, or any of the expenses

thereof, except as hereinafter set forth; denies that it paid the said James M. Hyde for his services in assisting in the defense of said alleged suit. This defendant avers that the said James M. Hyde paid the expenses of the defense of the said suit with the exclusive right in Silver Bow County, Montana, to the process owned by the said James M. Hyde and covered by United States Patent No. 1,022,085, that exclusive right being granted to this defendant herein for such sum of money as was or is necessary to cover the expenses involved in the defense of the said suit. Denies that the alleged acts decreed in the said suit referred to to be acts of infringement were carried on under certain Letters Patent issued to the said James M. Hyde on April 22nd, 1912, No. 1,022,085; admits that since the commencement of the said suit of the plaintiff and another against James M. Hyde, the said James M. Hyde assigned to the defendant herein all of the right, title and interest of the said James M. Hyde in, to and under his said Letters Patent No. 1,022,085, for, to and in the County of Silver Bow and State of Montana; denies that any acts decreed in the said suit to be acts of infringement were carried on by the said defendant or that any act was carried on by the said defendant; admits that the said James M. Hyde carried on operations in the mill of the defendant and had working with him certain employees of the defendant but denies that any act in which the defendant's employees participated infringed upon the alleged patent of the plaintiff herein; denies

that the defendant herein has continued the use of said alleged process in the identical apparatus or any apparatus used by the said James M. Hyde, or has continued the use of said process as practised by the said James M. Hyde at all; denies that this defendant is a joint tort feasor with the said James M. Hyde in the acts alleged to have been decreed to be infringements; denies that this defendant is in privity with the said James M. Hyde, or any other person or is bound by the said decree against the said James M. Hyde, or any other person, or is bound by any decree at all; denies that this defendant is a tort feasor at all; denies that this defendant is using the alleged process of the plaintiff above-named or the said alleged process of the said Hyde. This defendant avers that the flotation process for the concentration of ore now and heretofore practised and used by it was devised and developed by its employees; that in the devising and developing of said process neither defendant nor its employees derived any information or assistance of any kind from the said patent No. 835,120; that defendant does not and never has practised or used the flotation process described in said alleged patent of the plaintiff's, nor any flotation process in the mode described in said patent; that the apparatus described in said patent as the instrumentality for practising the alleged process set forth in said patent is inoperative, impractical and useless; that no practical, profitable or commercial result can be obtained from any operations or apparatus described in said patent.

Further answering the allegations contained in paragraph 8, defendant denies each and every allegation contained in said paragraph not hereinbefore specifically admitted or denied.

IX.

Answering the allegations contained in paragraph 9, this defendant admits that prior to the commencement of said suit against James M. Hyde, the plaintiff made claims to the defendant in this suit that it claimed certain rights under said Letters Patent No. 835,120, but this defendant denies that the plaintiff in fact had any rights under said Letters Patent No. 835,120. This defendant admits that it was advised of the proceedings in the said suit of Minerals Separation, Limited, and another, against James M. Hyde; admits that the above styled Court in said action issued a permanent injunction in pursuance of said decree against the said James M. Hyde; admits that the said injunction and decree was directed to the said James M. Hyde, his confederates and associates, but denies that this defendant was at any time or is now a confederate or associate with the said James M. Hyde, and denies that it was in anywise, or at all, bound or affected by said decree or said injunction; admits that a copy of said decree was served upon this defendant; denies that this defendant has ever infringed the said Letters Patent or has continued to infringe the said Letters Patent in defiance of the decree of this Court or of the injunction issued there-

on, to its own profit or to the damage of the plaintiff, or has it at any time, or at all, infringed the said Letters Patent; denies that there was ever a decree of this Court or an injunction of this Court issued which in any manner affected the above-named defendant in the use of a flotation process, or otherwise, or at all.

Denies each and every allegation contained in paragraph 9 of plaintiff's bill of complaint not hereinbefore specifically admitted or denied.

X.

Denies each and every allegation contained in plaintiff's bill of complaint not hereinbefore specifically admitted or denied.

Further answering plaintiff's bill of complaint, this defendant further says:

I.

That said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot were not the original first or true inventors of the alleged invention in ore concentration which said Letters Patent No. 835,120 purport to embrace, or of any material or substantial part thereof, but that, on the contrary, said alleged invention and all material and substantial parts thereof had before their alleged invention been fully and clearly described or claimed in the following mentioned Letters Patent:

LETTERS PATENT OF THE UNITED STATES.

345,951	July 20, 1886	H. Bradford
348,157	August 24, 1886	C. J. Everson
444,345	January 6, 1891	E. R. Gabbett
466,753	January 5, 1892	E. A. Hockley.
469,599	February 23, 1892	A. M. Rouse
471,174	March 22, 1892	C. B. Hebron and C. J. Everson
474,829	May 17, 1892	C. B. Hebron
575,669	January 19, 1897	G. Robson
653,340	July 10, 1900	F. E. Elmore
676,679	June 18, 1901	F. E. Elmore
689,070	December 17, 1901	F. E. Elmore
692,643	February 4, 1902	F. E. Elmore
729,805	June 2, 1903	J. and L. Stoveken
735,071	August 4, 1903	G. D. Delprat
736,381	August 18, 1903	M. F. R. Glogner
745,960	December 1, 1903	I. F. Good
763,259	June 21, 1904	A. E. Cattermole
763,260	June 21, 1904	A. E. Cattermole
768,035	August 23, 1904	G. D. Delprat
771,075	September 27, 1904	C. Kendall
776,145	November 29, 1904	C. V. Potter
777,273	December 13, 1904	A. E. Cattermole
777,274	December 13, 1904	A. E. Cattermole
787,814	April 18, 1905	H. L. Sulman and H. F. Kirkpatrick-Picard. J. D. Wolf
788,247	April 25, 1905	A. E. Cattermole H. L. Sulman and H F. Kirkpatrick-Picard.
793,808	July 4, 1905	Sulman and H. F. Kirkpatrick-Picard.
809,959	January 16, 1906	E. B. Kirby

LETTERS PATENT OF GREAT BRITAIN.

488	February 23, 1860	W. Haynes
840	January 16, 1889	Boulton and Gabbett
12,778	June 4, 1902	Lake (Froment)

II.

Also that prior to the supposed invention or discovery of the alleged process patented in said Letters Patent No. 835,120 by said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot each and every material and substantial part of said supposed invention or discovery so patented had been invented and used by and was known to the following named persons, and was fully described in applications for Letters Patent of the United States deposited and filed by said persons in the United States Patent Office prior to the supposed invention or discovery of said alleged process set forth in said Letters Patent No. 835,120 by said Sulman, Kirkpatrick-Picard and Ballot; that said applications were so deposited and filed in the United States Patent Office and that Letters Patent of the United States were granted upon said applications as set forth below:

Moritz F. R. Glogner, a resident of Freiburg, in the Kingdom of Prussia, German Empire, on January 27, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 736,381 were granted thereon upon August 18, 1903.

Israel F. Good, a resident of Allentown, Pennsyl-

vania, on October 1, 1902, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters Patent No. 745,960 were granted thereon upon December 1, 1903.

Guillaume D. Delprat, a resident of Broken Hill, Australia, on January 2, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 768,035 were granted thereon upon August 23, 1904.

Cosmo Kendall, a resident of Upper Norwood, Surrey, England, on July 21, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 771,075 were granted thereon upon September 27, 1904.

Charles V. Potter, a resident of Balaclava, Victoria, Australia, on January 14, 1902, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 776,145 were granted thereon upon November 29, 1904.

Arthur E. Cattermole, a resident of Highgate, London, England, on September 28, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 777,273 were granted thereon upon December 13, 1904.

Arthur E. Cattermole, Henry L. Sulman and Hugh F. Kirkpatrick-Picard, all residents of London, England, on March 29, 1904, deposited and filed in the United States Patent Office their application for Letters Patent of the United States, and that Letters Patent No. 777,274 were granted thereon upon December 13, 1904.

Arthur E. Cattermole, Henry L. Sulman and Hugh F. Kirkpatrick-Picard, all residents of London, England, on March 29, 1904, deposited and filed in the United States Patent Office their application for Letters Patent of the United States, and that Letters Patent No. 788,247 were granted thereon upon April 25, 1905.

Henry L. Sulman and Hugh F. Kirkpatrick-Picard, residents of London, England, on October 5, 1903, deposited and filed in the United States Patent Office their application for Letters Patent of the United States, and that Letters Patent No. 793,808 were granted thereon upon July 4, 1905.

Alfred Schwarz, a resident of New York City, New York, on April 19, 1905, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters Patent No. 807,501 were granted thereon upon December 19, 1905.

Alfred Schwarz, a resident of New York City, New York, on May 27, 1904, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters

Patent No. 807,503 were granted thereon upon December 19, 1903.

Edmund B. Kirby, a resident of Rossland, Canada, on December 14, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 809,959 were granted thereon upon January 16, 1906.

Edmund B. Kirby, a resident of Rossland, Canada, on December 17, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 838,626 were granted thereon upon December 18, 1906.

Also patented or described and contained in other Letters Patent, the dates, numbers and grantees of which this defendant is not now able to specify, but prays to be allowed hereafter to add by amendment of this answer or otherwise, if it shall become necessary.

Also illustrated and described in printed publications, the names and dates of which defendant is not able to specify, but prays to be allowed hereafter to add to this answer by amendment or otherwise, if it shall become necessary.

III.

This defendant avers that for the purpose of deceiving the public the description and specification filed by the said patentees in the Patent Office was in some particulars made to contain more than the

whole truth relative to their alleged invention or discovery and more than is necessary to produce the desired effect, and that in other particulars the said description and specification was made to contain less than the whole truth relative to their alleged invention or discovery.

IV.

This defendant says that the said patentees, Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot and said plaintiff here, Minerals Separation, Limited, have admitted that the alleged invention, which said Letters Patent No. 835,120 purport to embrace, and each and every material and substantial part thereof was old and known to others prior to their alleged invention and discovery thereof, and have stated that said alleged invention was the invention of others, and that said patentees made said admissions and statements in the following described Letters Patent, and in the applications therefor and proceedings in the United States Patent Office relating thereto, and also in other patents, documents and writings:

LETTERS PATENT OF THE UNITED STATES.

793,808, Sulman & Kirkpatrick-Picard, application filed October 5, 1903, patented July 4, 1905.

835,143, Henry L. Sulman, application filed October 20, 1905, patented November 6, 1906.

835,479, Sulman, Kirkpatrick-Picard & Ballot, application filed May 20, 1905, patented November 6, 1906.

879,985, Sulman, Kirkpatrick-Picard & Ballot, application filed February 20, 1905, patented February 25, 1908.

LETTERS PATENT OF GREAT BRITAIN.

17,109, August 6, 1903, Cattermole, Sulman & Kirkpatrick-Picard.

20,419, September 22, 1903, Sulman & Kirkpatrick-Picard.

5,260, March 13, 1905, Sulman, Kirkpatrick-Picard & Ballot.

19,709, September 19, 1905, Sulman.

26,712, December 21, 1905, Sulman, Kirkpatrick-Picard & Ballot.

23,870, October 14, 1910, Minerals Separation, Limited, and Nutter.

23,949, October 15, 1910, Nutter, Hoover and Minerals Separation, Limited.

V.

Defendant, further answering, says, that the plaintiff herein is not entitled to the relief prayed for in its bill of complaint, without this that there is any other matter, cause or thing in the said bill of complaint contained, material or necessary, for this defendant to make answer unto, and not hereinbefore sufficiently

answered, confessed or avoided, traversed or denied, is true; all of which this defendant is ready to aver, maintain and prove as this Honorable Court shall direct and prays to be hence dismissed with its costs in this behalf most wrongfully sustained.

BUTTE AND SUPERIOR COPPER COMPANY, LIMITED,

By A. B. WOLVIN,

Director.

SHERIDAN, WILKINSON & SCOTT,
KREMER, SANDERS & KREMER,
Solicitors for Defendant.

THOMAS F. SHERIDAN,
WALTER A. SCOTT,
J. BRUCE KREMER,
Of Counsel.

UNITED STATES OF AMERICA,
DISTRICT OF MONTANA,
COUNTY OF SILVER BOW,—ss.

A. B. Wolvin, being first duly sworn on oath, deposes and says:

That he is a director of Butte and Superior Copper Company, Limited, the defendant named in the foregoing answer; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein alleged

on information and belief, and as to those matters he believes it to be true. He further states that he makes this verification for and on behalf of said defendant corporation.

A. B. Wolvin.

Subscribed and sworn to before me this 28th day of October, 1913.

E. F. O'Flynn,

Notary Public in and for the State of Montana, residing at Butte, Montana.

My commission expires May 16th, 1914.

(Notarial Seal.)

UNITED STATES OF AMERICA,
DISTRICT OF MONTANA,
COUNTY OF SILVER BOW,——ss.

J. Bruce Kremer, being first duly sworn on oath, deposes and says:

That he is one of the solicitors for defendant in the above entitled action; that the solicitors of record for the plaintiff are Henry D. Williams, Esq., of New York City, New York, who has law offices in the City of New York, New York, and Odell W. McConnell, Esq., of Helena, Montana, who has law offices in Helena, Montana, and that for said reason it

was impossible for affiant, or any solicitor for the defendant, personally to serve upon the said solicitors for the plaintiff the foregoing answer, and that on the 28th day of October, 1913, affiant personally served upon the said plaintiff and its solicitors the foregoing answer by depositing a true copy thereof in the Post Office in the City of Butte, Montana, with sufficient postage prepaid thereon, said copy of said answer then and there being enclosed in an envelope and addressed to Odell W. McConnell, Esq., Attorney at Law, Helena, Montana.

J. Bruce Kremer.

Subscribed and sworn to before me this 28th day of October, 1913.

E. F. O'Flynn,

Notary Public in and for the State of Montana. My commission expires May 16, 1914.

(Notarial Seal.)

FILED: Oct. 28, 1913.

Geo. W. Sproule, Clerk,
By Harry H. Walker, Deputy.

And thereafter on March 27, 1917, the supplemental answer of defendant was filed, being as follows:

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED,
Plaintiff,
vs.
BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,
Defendant.

IN EQUITY.

SUPPLEMENTAL ANSWER

Comes now the defendant above-named, and with leave of court first had and received, files this, its supplemental answer to the bill of complaint heretofore filed by the plaintiff and complainant above-named, and alleges:

I.

That heretofore, to-wit: on the 10th day of October, 1913, the above-named plaintiff filed its bill in this court against the above-named defendant; that said complaint in effect charged that the plaintiff and defendant were both corporations and plaintiff was the owner and entitled to United States Letters Patent No. 835,120, issued on November 3rd, 1906, being a patent for improvements in ore concentration; that on the 29th day of May, 1905, Henry Livingstone Sul-

man, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, being within the meaning of the statutes of the United States then in force, the original, first and joint inventors of a new and useful process of ore concen

P. XXXIV, L. 6, after " Office " insert " an application for Letters Patent and that Letters Patent "

~~the applicants for patent~~ to the above-named plaintiff. Plaintiff alleges that the invention is of great value and that the defendant has infringed said Letters Patent and particularly claims 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12, of said patent; plaintiff further alleging that another suit was filed by the plaintiff herein and another against James M. Hyde and that the above styled court rendered a decree in favor of the above-named plaintiff and its co-plaintiff; that the said Hyde confederated with the defendant in the alleged infringement of said patent, plaintiff herein praying for a permanent injunction and an injunction pendente lite and that its patent be declared valid and for an accounting. Reference is hereby made to the original bill of complaint for a more complete statement of the contents thereof, said bill of complaint being of the records and files of this court in the above entitled action.

II.

That on or about the 28th day of October, 1913, the defendant interposed its answer to the bill of com-

plaint wherein, after admitting that the plaintiff is a corporation and that the suit is brought under the Patent Laws of the United States, the defendant denies each and all of the allegations of the complaint, and particularly the allegations with reference to infringement of said patent, or any of the claims thereof, the validity of each and every claim contained in said patent, and any confederation with the said defendant James M. Hyde.

III.

Further answering said bill the defendant set up as ~~an~~ additional defense that Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot were not the original, first ~~or~~ and true inventors of the alleged invention in ore concentration, which said Letters Patent No. 835,120 purport to embrace, or any material or substantial part thereof, because the same was fully and clearly described or claimed in the list of Letters Patent set forth in paragraph 1 of the affirmative defenses of said answer; and the said defendant set up as a further and additional defense that each and every material part of the supposed invention so claimed to have been patented and invented by Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot was known to a great number of persons and was described in applications for Letters Patent of the United States deposited by persons in the United States Patent Office prior to the supposed invention and discovery of the alleged process set forth in said Letters Patent No. 835,120, as set forth in para-

graph 2 of the affirmative defenses contained in defendant's answer, and the said defendant claimed as an affirmative defense that for the purpose of deceiving the public the description and specifications filed by the patentees in the Patent Office for said patent were in some particulars made to contain more than the whole truth relative to their alleged invention and discovery and more than is necessary to produce the desired effect and that in other particulars the said description and specifications were made to contain less than the whole truth relative to their alleged invention or discovery as set forth in paragraph 3 of the affirmative defenses of the defendant; and the said defendant set forth as a further additional defense that the said patentees aforesaid have admitted that the alleged invention, which said Letters Patent No. 835,-120 purport to embrace, and each and every material and substantial part thereof, was old and known to others prior to said alleged invention and that said admissions were made in the Letters Patent as set forth in paragraph 4 of the affirmative defenses of the defendant contained in its answer. Reference is hereby made to the original answer herein filed by the defendant for a more complete statement of the contents thereof, which said answer is of the files and records of this court in the above entitled action.

IV.

That said issues became joined by the filing of said answer; that from the date of the filing of said

answer the said case was and still is at issue; that since the filing of said answer the case of Minerals Separation and another against James M. Hyde was, on appeal from the above styled court, considered by the Circuit Court of Appeals for the Ninth Circuit, and the said Circuit Court of Appeals in May, 1914, reversed and set aside the decree of the above styled court in favor of the above-named plaintiff and another and against James M. Hyde, and did declare the said Patent No. 835,120 and all of the claims thereof invalid and of no force or effect; that thereafter the said case of the above-named plaintiff and another versus James M. Hyde reached the Supreme Court of the United States through a writ of certiorari and was thereafter argued before the said Supreme Court of the United States and a decision therein rendered by the Supreme Court of the United States by which decision the decision of the Circuit Court of Appeals of the Ninth Circuit was reversed and set aside except that the said Supreme Court of the United States declared claims 9, 10 and 11 of said patent No. 835,120 invalid and of no force and effect, and that said decision so declaring said claims invalid was rendered on the 11th day of December, 1916, and that the said plaintiff was then and there and on said date duly advised of the decision and order of the said Supreme Court of the United States upon the patent aforesaid and did know that the said Supreme Court of the United States had declared each and all of said claims 9, 10 and 11 invalid and that said plaintiff has wholly failed and unreasonably neglected

and delayed the filing of a proper or any disclaimer in writing of the matters set forth in claims 9, 10 and 11 in the Patent Office of the United States, and has wholly failed to disclaim in writing its claim to said claims 9, 10 and 11, or to any or either of them; that by reason of said unreasonable neglect and delay of the said plaintiff to disclaim in writing each and all claims to claims 9, 10 and 11, the whole of said patent No. 835,120 had become wholly void and invalid and of no force or effect, and plaintiff cannot rely thereon nor maintain action in equity under said patent, and that the plaintiff is now barred by reason of said unreasonable delay and neglect from any relief of any kind or nature in equity, nor can plaintiff now be given any assistance in a court of equity for any alleged invasion of its alleged rights under said patent; nor can plaintiff maintain an action for injunction or accounting and that it is estopped from any further proceedings herein by reason of its unreasonable delay and neglect to file a proper disclaimer of the claims held invalid by the Supreme Court of the United States, as aforesaid, and in accordance with the statutes of the United States of America in such cases made and provided; that said defense could not have been set forth in the original answer herein on file for the reason that the acts and things herein set forth in connection with said disclaimer were all subsequent to the date of the filing of said answer and subsequent to the 11th day of December, 1916, the date upon which the Supreme Court of the United States handed down its decision

in the case of Minerals Separation and another versus James M. Hyde; that said plaintiff has wholly failed up to this time to file any disclaimer whatsoever in the Patent Office of the United States as required by law.

V.

By way of further defense herein defendant alleges that the said plaintiff is estopped from asserting or claiming that its said alleged patent, or any claim thereof, is infringed by the use of an amount of oil exceeding five-tenths of one per cent. on the weight of the ore treated at a given time, for the reason that the said palintiff in a judicial proceeding has stated that its invention was not practised by the use of an amount of oil in excess of five-tenths of one per cent. on the weight of the ore treated and by the further statements in a judicial proceeding that its invention was not reached until the amount of oil reached and fell below five-tenths of one per cent. on the ore treated; that each of said statements was made in a judicial proceeding in a court having jurisdiction of the subject matter since the joinder of issue in this case; that by reason of said statements the said plaintiff is now precluded and estopped from asserting in this court of equity that its invention embraces more than that described and claimed by it as aforesaid. Defendant alleges that said acts immediately last complained of did not occur until after the joinder of issue herein and the defendant did not become acquainted with the said facts until November, 1916.

WHEREFORE, defendant, having fully answered, prays to be dismissed hence with its costs.

THOMAS F. SHERIDAN,
W. A. SCOTT,
J. BRUCE KREMER,
THOS. H. SHERIDAN,
L. P. SANDERS,
ALF. C. KREMER,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
DISTRICT OF MONTANA,
COUNTY OF SILVER BOW,—ss.

J. L. BRUCE, being first duly sworn on oath, deposes and says:

That he is an officer, to-wit: the Manager and also the agent of the above-named defendant, and makes this verification in said capacity for and on behalf of the above-named defendant; that he has read the foregoing supplemental answer, knows the contents thereof, and that the matters and things therein stated are true to the best of his knowledge, information and belief.

J. L. BRUCE.

Subscribed and sworn to before me this 17th day of March, 1917.

C. H. TUOHY,

Notary Public for the State of Montana, residing at Butte, Montana. My commission expires July 7th, 1918.

(NOTARIAL SEAL.)

Filed: March 27, 1917.
GEO W. SPROULE, Clerk,
By H. H. WALKER, Deputy.

And thereafter on April 17th, 1917, the amendment to answer of defendant was filed, being as follows:

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, Plaintiff, vs. BUTTE & SUPERIOR MINING COMPANY, formerly Butte & Superior Copper Company, Limited, Defendant.	IN EQUITY. **AMENDMENT TO ANSWER.**

Now comes the defendant, BUTTE & SUPERIOR MINING COMPANY, and amends its answer in the above entitled suit in the following manner, TO-WIT:

By cancelling the paragraph numbered I beginning at Line 20, page 12, and extending to the bottom of page 13, and substituting for the cancelled passage the following:

I.

(a) That the supposed invention set forth in said Letters Patent, No. 835,120, had been patented and had been described in printed publications prior to the supposed invention thereof by said Sulman, Kirkpatrick-Picard and Ballot, and had been patented and

described in printed publications more than two years prior to their application for a patent therefor; that said supposed invention was patented and fully described in each of the following described patents and publications, each of which patents was granted and became a patent and each of with patents and publications was published as a printed publication more than two years prior to the application by said Sulman, Picard and Ballot for said patent No. 835,120:

British patent to William Haynes, No. 488, dated February 23, 1860, sealed August 17, 1860.

UNITED STATES PATENTS.

No.	Date of Patent	Patentee
348,157	Aug. 24, 1886	C. J. Everson
575,669	Jan. 19, 1897	G. Robson
469,599	Feb. 23, 1892	A. M. Rouse

PUBLICATIONS.

The Daily Herald Democrat, published at Leadville, Colorado, October 30, 1889.

The Engineering and Mining Journal, published at New York City, N. Y., November 15, 1890.

(b) That said supposed invention was patented and fully described in each of the patents and publications set forth in paragraph (a) hereof and in the following described patents and publications, each of which patents was granted and became a patent, and each of which patents and publications was published as a printed publication prior to the supposed invention thereof by said Sulman, Kirkpatrick-Picard and Ballot.

No.	Date of Patent	Patentee
736,381	Aug. 18, 1903	M. F. R. Glogner
745,960	Dec. 1, 1903	I. F. Good
763,259	June 21, 1904	A. E. Cattermole
763,260	June 21, 1904	A. E. Cattermole
763,749	June 28, 1904	G. A. Goyder and E. Laughton
777,273	Dec. 13, 1904	G. D. Delprat
768,035	Aug. 23, 1904	A. E. Cattermole
777,274	Dec. 13, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard
784,999	Mar. 14, 1905	G. A. Goyder and E. Laughton
776,145	Nov. 29, 1904	G. V. Potter
787,814	Apr. 18, 1905	J. D. Wolf
788,247	Apr. 25, 1905	H. L. Sulman, H. F. Kirkpatrick-Picard and A. E. Cattermole.

British patent to Henry Harris Lake, communicated by Alcide Froment, No. 12,778, of 1902, applied for June 4, 1902, complete specification left March 4, 1903, accepted June 4, 1903, sealed August 18, 1903.

Italian patent to Alcide Froment, Regro Genle Vole 43, No. 63,723. Regro Attes. Vol. 156, No. 166, May 20, 1902.

PUBLICATIONS

The California Journal of Technology for November, 1903, published at Berkeley, California, by the students in the Applied Science Colleges in the Uni-

versity of California, which contains upon pages 34 to 41 an article by W. F. Copeland, Drury Butler and James H. Wise, entitled "Experiments on the Elmore Process of Oil Concentration."

(c) That said Sulman, Kirkpatrick-Picard and Ballot were not the original or first inventors or discoverers of any material or substantial part of the thing patented in and by said patent No. 835,120, but that said supposed invention and all material and substantial parts thereof had before their alleged invention thereof been invented by the several persons named and referred to in paragraphs (a) and (b) hereof, and by them patented and described as therein set forth, and by others who fully and clearly described every material and substantial part of said supposed invention in applications filed by them in the United States Patent Office for United States patents and in Letters Patent granted by the United States, and that the following are the names of said parties, the dates of the patents granted to them, and the dates of filing of the United States patent applications in those instances where the patents were granted subsequent to the date of alleged invention by Sulman, Kirkpatrick-Picard and Ballot.

UNITED STATES PATENTS

No.	Date of Patent	Patentee.
228,004	May 25, 1880	J. Tunbridge
345,591	July 20, 1886	H. Bradford
373,113	Nov. 15, 1887	Henry J. Wagner
444,345	Jan. 6, 1891	E. R. Gabbett
466,753	Jan. 5, 1892	E. A. Hockley
469,599	Feb. 23, 1892	A. M. Rouse
471,174	Mar. 22, 1892	C. B. Hebron and C. J. Everson
474,829	May 17, 1892	C. B. Hebron
521,889	June 26, 1894	Joseph Wm. Sutton
653,340	July 10, 1900	F. E. Elmore
667,222	Feb. 5, 1901	John W. Ivery
676,679	June 18, 1901	F. E. Elmore
689,070	Dec. 17, 1901	A. S. Elmore
692,643	Feb. 4, 1902	A. S. Elmore
703,905	July 1, 1902	A. S. Elmore
729,805	June 2, 1903	J. & L. Stoveken
735,071	Aug. 4, 1903	G. D. Delprat
763,259	June 21, 1904	A. E. Cattermole
763,859	June 28, 1904	J. D. Darling
768,035	Aug. 23, 1904	G. D. Delprat
770,659	Sept. 20, 1904	J. B. Scammell
776,145	Nov. 29, 1904	C. V. Potter

No.	Date of Patent	Date of Application	Patentee
787,814	Apr. 18, 1905	May 22, 1903	J. D. Wolf of London, England
788,247	Apr. 25, 1905	Mar. 29, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard — all of London, England
793,808	July 4, 1905	Oct. 5, 1903	H. L. Sulman and H. F. Kirkpatrick-Picard; of London, England
807,502	Dec. 19, 1905	May 27, 1904	A. Schwartz of New York, N. Y.
807,503	Dec. 19, 1905	May 27, 1904	A. Schwarz, of New York, N. Y.
807,504	Dec. 19, 1905	Sept. 21, 1904	A. Schwarz of New York, N. Y.
807,505	Dec. 19, 1905	Oct. 14, 1904	A. Schwarz of New York, N. Y.
807,506	Dec. 19, 1905	Nov. 4, 1904	A. Schwarz of New York, N. Y.
809,959	Jan. 16, 1906	Dec. 14, 1903	Edmund B. Kirby formerly of Rossland, British Columbia, now of St. Louis, Mo.
838,626	Dec 18, 1906	Dec. 17, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia, now of St. Louis, Mo.

(d) That said H. L. Sulman, H. F. Kirkpatrick-Picard and John Ballot unjustly obtained said patent No. 835,120 for that which was in fact invented by others who were using reasonable diligence in adapting and perfecting the same; that said other parties filed in the United States Patent Office applications for patents fully describing the supposed invention set forth in said patent No. 835,120 and obtained patents therefor;

the names of said other parties, the dates when they filed said patent applications, the numbers of the patents so granted, and the dates when said patents were granted being as follows:

No.	Date of Patent	Date of Application	Patentee
787,814	Apr. 18, 1905	May 22, 1903	J. D. Wolf, of London, England
788,247	Apr. 25, 1905	Mar. 29, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard, all of London, England.
793,808	July 4, 1905	Oct. 5, 1903	H. L. Sulman and H. F. Kirkpatrick-Picard, of London, England.
807,502	Dec. 19, 1905	May 27, 1904	A. Schwarz, New York, N. Y.
807,503	Dec. 19, 1905	May 27, 1904	A. Schwarz, New York, N. Y.
807,504	Dec. 19, 1905	Sept. 21, 1904	A. Schwarz, New York, N. Y.
807,505	Dec. 19, 1905	Oct. 14, 1904	A. Schwarz, New York, N. Y.
807,506	Dec. 19, 1905	Nov. 4, 1904	A. Schwarz, New York, N. Y.
809,959	Jan. 18, 1906	Dec. 14, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia, now of St. Louis, Mo.
838,626	Dec. 18, 1906	Dec. 17, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia, now of St. Louis, Mo.

FILED: April 17, 1917.

GEO. W. SPROULE, Clerk.

By H. H. WALKER, Deputy.

And thereafter on April 17th, 1917, the answer of defendant was filed, being as follows, to-wit:

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED,
Plaintiff,
vs.
BUTTE & SUPERIOR COPPER COMPANY,
Defendant.

IN EQUITY.
ANSWER.

The answer of Butte and Superior Copper Company, Limited, defendant, to the bill of complaint of plaintiff, Minerals Separation, Limited.

The defendant now and at all times saving and reserving unto itself all and all manner of benefit and advantages of exception which can or may be had or taken to the errors, uncertainties or other imperfections contained in the bill of complaint herein, for answer hereto, or to so much or such parts thereof as it is advised it is material to make answer unto, says as follows:

I.

This defendant admits that plaintiff is a corporation duly organized and existing under and by virtue of the laws of Great Britain and an inhabitant of Great Britain, and has its principal office in London, England, admits that the defendant is a corporation duly organized and existing under the laws of the State of Arizona, and has a regular established place of business in the City of Butte, Silver Bow County, State of Montana. Denies that it has committed acts or any act of infringement at said place, or at any place, or at any time, or at all, as alleged in plaintiff's bill of complaint, or otherwise.

II.

Admits that this suit is brought under the patent laws of the United States for the alleged infringement of the United States Letters Patent No. 835,120, issued November 6th, 1906, for alleged improvements in ore concentration; but denies that there has been any infringement thereof by this defendant.

III.

Denies that on the 29th day of May, 1905, or at any other time, Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot were, within the meaning of the statutes of the United States then in force, the original or first or joint inventors, or that either of them was, or that any of them were the original or first or joint inventors of a certain new or useful process of ore concentration, or were entitled to a

patent thereon under the provisions of said statutes, or that they duly filed in the United States Patent Office an application for Letters Patent of said alleged invention; denies that on the 6th day of November, 1906, all of the requirements of the statutes having been duly complied with, the said Letters Patent of the United States No. 835,120 were duly issued on said application to the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, or either, or any of them; admits that a certain alleged patent, being No. 835,120, was issued to Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot.

Denies each and every allegation contained in paragraph 3 of plaintiff's bill of complaint not hereinbefore specifically admitted or denied.

IV.

Denies that it has any knowledge or information as to whether on or about the 7th day of December, 1909, the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot duly or at all assigned to the plaintiff all right, title and interest in and to said alleged invention and alleged Letters Patent, or that plaintiff is now the sole owner of said alleged invention or Letters Patent, or of all rights of action, or claim, or demand for alleged infringement thereof since said alleged assignment.

V.

Defendant denies that said alleged invention is of great value or utility; denies that there was or is any

invention in the said alleged patent No. 835,120; denies that it has any knowledge or information as to whether the plaintiff has been to great trouble or expense in demonstrating the alleged utility thereof, or in introducing the same into extensive commercial use in the United States or elsewhere; denies that it has any knowledge or information as to whether the plaintiff has granted numerous licenses for carrying on said alleged process of ore concentration in the United States or elsewhere; denies that said alleged process has been or is now being extensively carried on in the United States, or elsewhere; denies that plaintiff has any patent upon any alleged process, and denies that plaintiff has the right to grant licenses for the use of said alleged process conditioned on the payment of royalty measured by the output of said alleged process of ore concentration, or otherwise, or at all.

Denies each and every allegation contained in paragraph 5 of plaintiff's bill of complaint not hereinbefore specifically admitted or denied.

VI.

Answering the allegations contained in paragraph 6 of plaintiff's bill of complaint, this defendant denies that it has infringed or is infringing the said alleged Letters Patent since the plaintiff acquired the same or at any other time, or at all, by installing apparatus for or carrying on the use of said alleged process of ore concentration, or in any other manner, or at all, at the town of Basin, in the County of Jefferson, State of Montana, or at the City of Butte, Silver Bow County,

State of Montana, or at any other place, or at all, without the consent or allowance of the plaintiff, or at all; denies that said alleged process of ore concentration alleged to have been carried on by this defendant embodied the said alleged invention as claimed in claims one (1) or two (2), or three (3), or five (5), or six (6), or seven (7), or nine (9), or ten (10), or eleven (11), or twelve (12), or any other claim of said alleged Letters Patent; denies that the defendant is carrying on any alleged infringement at the last named place, or at any other place, or at all, as a continuing or any act or threatens to continue to use said process or to infringe or threatens to infringe at all; denies that defendant has ever infringed said alleged patent.

VII.

Answering the allegations contained in paragraph 7 of plaintiff's bill of complaint, defendant admits that the plaintiff and another, on or about October 9th, 1911, brought suit in this Court against James M. Hyde for alleged infringement of said Letters Patent No. 835,120, but denies that said suit was fully contested on its merits, but admits that said suit was presented at length to this Court on briefs and arguments of counsel; admits that this Court, in an opinion filed July 26th, 1913, the Court having jurisdiction of the persons and subject matter in said suit, directed that an interlocutory decree be entered adjudging the validity of said Letters Patent as against James M. Hyde, and infringement thereof by said James M. Hyde, as to the particular claims herein charged to be

the subject of the alleged infringement by the defendant herein; but denies that there was an adjudication of the validity of said Letters Patent as against this defendant, or that this defendant was in any manner affected by or was in any manner a party to the said alleged suit above referred to; admits that the above styled Court directed the issuance of an injunction restraining from alleged further infringement by the said James M. Hyde and a reference to a master for ascertaining profits and damages to be awarded against the said James M. Hyde, and admits that on the 15th of August, 1913, a decree was entered as directed by the said Court and that thereafter, a permanent injunction restraining the said James M. Hyde from further alleged infringement of said Letters Patent No. 835,120 was issued by the above Court. This answering defendant states that thereafter, and after the entry of said decree, James M. Hyde, the defendant in the said action above referred to, duly and regularly in compliance with the laws governing such matters and in compliance with the rules of this Court and all other Courts having jurisdiction over the said action, duly and regularly perfected an appeal in the case of the above named plaintiff and another against the said James M. Hyde, and that said appeal was duly and regularly allowed by a Judge of the Circuit Court of Appeals, of the Ninth Circuit, and that said action above referred to is now on appeal, and that the said cause will shortly be presented to the said Circuit Court of Appeals of the Ninth Circuit for final adjudication and hearing; and defendant further avers that

the said patent in suit by reason of said appeal to the said Circuit Court of Appeals has not been within the meaning of the law adjudicated and that the rights of the said plaintiff above-named and the said James M. Hyde to the use of the alleged process has not been fully determined and designated by the Circuit Court of Appeals.

Further answering the allegations contained in paragraph 7, this defendant denies each and every allegation contained therein not hereinbefore specifically admitted or denied.

VIII.

Answering the allegations contained in paragraph 8 of plaintiff's bill of complaint, this defendant denies that it confederated with the said James M. Hyde, or any other person, or at all, in the alleged acts of infringement, or any act of infringement complained of in the said alleged suit against the said James M. Hyde, or at all; denies that it was an actual defendant therein, or a defendant therein at all; denies that it conducted the defense of said suit and denies that it paid all the expenses thereof, or any of the expenses thereof, except as hereinafter set forth; denies that it paid the said James M. Hyde for his services in assisting in the defense of said alleged suit. This defendant avers that the said James M. Hyde paid the expenses of the defense of the said suit with the exclusive right in Silver Bow County, Montana, to the process owned by the said James M. Hyde and covered by United States Patent No.

1,022,085, that exclusive right being granted to this defendant herein for such sum of money as was or is necessary to cover the expenses involved in the defense of the said suit. Denies that the alleged acts decreed in the said suit referred to to be acts of infringement were carried on under certain Letters Patent issued to the said James M. Hyde on April 22d, 1912, No. 1,022,085; admits that since the commencement of the said suit of the plaintiff and another against James M. Hyde, the said James M. Hyde assigned to the defendant herein all of the right, title and interest of the said James M. Hyde in, to and under his said Letters Patent No. 1,022,085, for, to and in the County of Silver Bow and State of Montana; denies that any acts decreed in the said suit to be acts of infringement were carried on by the said defendant or that any act was carried on by the said defendant; admits that the said James M. Hyde carried on operations in the mill of the defendant and had working with him certain employees of the defendant but denies that any act in which the defendant's employees participated infringed upon the alleged patent of the plaintiff herein; denies that the defendant herein has continued the use of said alleged process in the identical apparatus or any apparatus used by the said James M. Hyde, or has continued the use of said process as practised by the said James M. Hyde at all; denies that this defendant is a joint tort feasor with the said James M. Hyde in the acts alleged to have been decreed to be infringements; denies that this defendant is in privity with the said James M. Hyde, or any other person or

is bound by the said decree against the said James M. Hyde, or any other person, or is bound by any decree at all; denies that this defendant is a tort feasor at all; denies that this defendant is using the alleged process of the plaintiff above-named or the said alleged process of the said Hyde. This defendant avers that the flotation process for the concentration of ore now and heretofore practised and used by it was devised and developed by its employees; that in the devising and developing of said process neither defendant nor its employees derived any information or assistance of any kind from the said patent No. 835,120; that defendant does not and never has practised or used the flotation process described in said alleged patent of the plaintiff's, nor any flotation process in the mode described in said patent; that the apparatus described in said patent as the instrumentality for practising the alleged process set forth in said patent is inoperative, impractical and useless; that no practical, profitable or commercial result can be obtained from any operations or apparatus described in said patent.

Further answering the allegations contained in paragraph 8, defendant denies each and every allegation contained in said paragraph not hereinbefore specifically admitted or denied.

IX.

Answering the allegations contained in paragraph 9, this defendant admits that prior to the commencement of said suit against James M. Hyde, the plaintiff made claims to the defendant in this suit that it

claimed certain rights under said Letters Patent No. 835,120, but this defendant denies that the plaintiff in fact had any rights under said Letters Patent No. 835,120. This defendant admits that it was advised of the proceedings in the said suit of Minerals Separation, Limited, and another, against James M. Hyde; admits that the above styled Court in said action issued a permanent injunction in pursuance of said decree against the said James M. Hyde; admits that the said injunction and decree was directed to the said James M. Hyde, his confederates and associates, but denies that this defendant was at any time or is now a confederate or associate with the said James M. Hyde, and denies that it was in anywise, or at all, bound or affected by said decree or said injunction; admits that a copy of said decree was served upon this defendant; denies that this defendant has ever infringed the said Letters Patent or has continued to infringe the said Letters Patent in defiance of the decree of this Court or of the ~~judgment~~ injunction issued thereon, to its own profit or to the damage of the plaintiff, or has it at any time, or at all, infringed the said Letters Patent; denies that there was ever a decree of this Court or an injunction of this Court issued which in any manner affected the above-named defendant in the use of a flotation process, or otherwise, or at all.

Denies each and every allegation contained in paragraph 9 of plaintiff's bill of complaint not hereinbefore specifically admitted or denied.

X.

Denies each and every allegation contained in plaintiff's bill of complaint not hereinbefore specifically admitted or denied.

Further answering plaintiff's bill of complaint, this defendant further says:

I.

(a) That the supposed invention set forth in said Letters Patent, No. 835,120, had been patented and had been described in printed publications prior to the supposed invention thereof by said Sulman, Kirkpatrick-Picard and Ballot, and has been patented and described in printed publications more than two years prior to their application for a patent therefor; that said supposed invention was patented and fully described in each of the following described patents and publications, each of which patents was granted and became a patent and each of which patents and publications was published as a printed publication more than two years prior to the application by said Sulman, Picard and Ballot for said patent No. 835,120.

British patent to William Haynes, No. 488, dated February 23, 1860, sealed August 17, 1860.

UNITED STATES PATENTS.

No.	Date of Patent	Patentee
348,157	Aug. 24, 1886	C. J. Everson
575,669	Jan. 19, 1897	G. Robson
469,599	Feb. 23, 1892	A. M. Rouse

PUBLICATIONS.

The Daily Herald Democrat, published at Leadville, Colorado, October 30, 1889.

The Engineering and Mining Journal, published at New York City, N. Y., November 15, 1890.

(b) That said supposed invention was patented and fully described in each of the patents and publications set forth in paragraph (a) hereof and in the following described patents and publications, each of which patents was granted and became a patent, and each of which patents and publications was published as a printed publication prior to the supposed invention thereof by said Sulman, Kirkpatrick-Picard and Ballot.

No.	Date of Patent	Patentee
736,381	Aug. 18, 1903	M. F. R. Glogner
745,960	Dec. 1, 1903	I. F. Good
763,259	June 21, 1904	A. E. Cattermole
763,260	June 21, 1904	A. E. Cattermole
763,749	June 28, 1904	G. A. Goyder and E. Laughton
768,035	Aug. 23, 1904	G. D. Delprat
777,273	Dec. 13, 1904	A. E. Cattermole
777,274	Dec. 13, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard
784,999	Mar. 14, 1905	G. A. Goyder and E. Laughton
776,145	Nov. 29, 1904	C. V. Potter
787,814	Apr. 18, 1905	J. D. Wolf
788,247	Apr. 25, 1905	H. L. Sulman, H. F. Kirkpatrick-Picard and A. E. Cattermole

British patent to Henry Harris Lake, communicated by Alcide Froment, No. 12,778 of 1902, applied for June 4, 1902, complete specification left March 4, 1903, accepted June 4, 1903, sealed August 18, 1903.

Italian patent to Alcide Froment, Regro Genle, Vole. 43, No. 63,723. Regro Attes. Vol. 156, No. 166, May 20, 1902.

PUBLICATIONS.

The California Journal of Technology for November, 1903, published at Berkeley, California, by the students in the Applied Science College in the University of California, which contains upon pages 34 to 41 an article by W. F. Copeland, Drury Butler and James H. Wise, entitled "Experiments on the Elmore Process of Oil Concentration."

(c) That said Sulman, Kirkpatrick-Picard and Ballot were not the original or first inventors or discoverers of any material or substantial part of the thing patented in and by said patent No. 835,120, but that said supposed invention and all material and substantial parts thereof had before their alleged invention thereof been invented by the several persons named and referred to in paragraphs (a) and (b) hereof, and by them patented and described as therein set forth, and by others who fully and clearly described every material and substantial part of said supposed invention in applications filed by them in the United States Patent Office for United States patents and in Letters Patent granted by the United States, and that the following are the names of said parties,

the dates of the patents granted to them, and the dates of filing of the United States patent applications in those instances where the patents were granted subsequent to the date of alleged invention by Sulman, Kirkpatrick-Picard and Ballot;

UNITED STATES PATENTS.

No.	Date of Patent	Patentee
228,004	May 25, 1880	J. Tunbridge
345,951	July 20, 1886	H. Bradford
373,113	Nov. 15, 1887	Henry J. Wagner
444,345	Jan. 6, 1891	E. R. Gabbett
466,753	Jan. 5, 1892	E. A. Hockley
469,599	Feb. 23, 1892	A. M. Rouse
471,174	Mar. 22, 1892	C. B. Hebron and C. J. Everson
474,829	May 17, 1892	C. B. Hebron
521,899	June 26, 1894	Joseph Wm. Sutton
653,340	July 10, 1900	F. E. Elmore
667,222	Feb. 5, 1901	John W. Ivery
676,679	June 18, 1901	F. E. Elmore
689,070	Dec. 17, 1901	A. S. Elmore
692,643	Feb. 4, 1902	A. S. Elmore
703,905	July 1, 1902	A. S. Elmore
729,805	June 2, 1903	J. and L. Stoveken
735,071	Aug. 4, 1903	G. D. Delprat
763,259	June 21, 1904	A. E. Cattermole
763,859	June 28, 1904	J. D. Darling
768,035	Aug. 23, 1904	G. D. Delprat
770,659	Sept. 20, 1904	J. B. Scammell
776,145	Nov. 29, 1904	C. V. Potter

No.	Date of Patent	Date of Application	Patentee
787,814	Apr. 18, 1905	May 22, 1903	J. D. Wolf of London, England
788,247	Apr. 25, 1905	Mar. 29, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard all of London, England
793,808	July 4, 1905	Oct. 5, 1903	H. L. Sulman and H. F. Kirkpatrick-Picard of London, England
807,502	Dec. 19, 1905	May 27, 1904	A. Schwarz of New York, N. Y.
807,503	Dec. 19, 1905	May 27, 1904	A. Schwarz of New York, N. Y.
807,504	Dec. 19, 1905	Sept. 21, 1904	A. Schwarz of New York, N. Y.
807,505	Dec. 19, 1905	Oct. 14, 1904	A. Schwarz of New York, N. Y.
807,506	Dec. 19, 1905	Nov. 4, 1904	A. Schwarz of New York, N. Y.
809,959	Jan. 16, 1906	Dec. 14, 1903	Edmund B. Kirby formerly of Rossland, British Columbia; now of St. Louis, Mo.
838,626	Dec. 18, 1906	Dec. 17, 1903	Edmund B. Kirby formerly of Rossland, British Columbia; now of St. Louis, Mo.

(d) That said H. L. Sulman, H. F. Kirkpatrick-Picard and John Ballot unjustly obtained said patent No. 835,120 for that which was in fact invented by others who were using reasonable diligence in adapting and perfecting the same; that said other parties filed in the United States Patent Office appli-

cations for patents fully describing the supposed invention set forth in said patent No. 835,120 and obtained patents therefor; the names of said other parties, the dates when they filed said patent applications, the numbers of the patents so granted and the dates when said patents were granted being as follows:

No.	Date of Patent	Date of Application	Patentee
787,814	Apr. 18, 1905	May 22, 1903	J. D. Wolfe of London, England
788,247	Apr. 25, 1905	Mar. 29, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard all of London, England
793,808	July 4, 1905	Oct. 5, 1903	H. L. Sulman and H. F. Kirkpatrick-Picard, of London, England
807,502	Dec. 19, 1905	May 27, 1904	A. Schwarz, New York, N. Y.
807,503	Dec. 19, 1905	May 27, 1904	A. Schwarz, New York, N. Y.
807,504	Dec. 19, 1905	Sept. 21, 1904	A. Schwarz, New York, N. Y.
807,505	Dec. 19, 1905	Oct. 14, 1904	A. Schwarz, New York, N. Y.
807,506	Dec. 19, 1905	Nov. 4, 1904	A. Schwarz, New York, N. Y.
809,959	Jan. 18, 1906	Dec. 14, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia; now of St. Louis, Mo.
838,626	Dec. 18, 1906	Dec. 17, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia; now of St. Louis, Mo.

II.

Also that prior to the supposed invention or discovery of the alleged process patented in said Letters Patent No. 835,120 by said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot each and every material and substantial part of said supposed invention or discovery so patented had been invented and used by and was known to the following named persons, and was fully described in applications for Letters Patent of the United States deposited and filed by said persons in the United States Patent Office prior to the supposed invention or discovery of said alleged process set forth in said Letters Patent No. 835,120 by said Sulman, Kirkpatrick-Picard and Ballot; that said applications were so deposited and filed in the United States Patent Office and that Letters Patent of the United States were granted upon said applications as set forth below:

Moritz F. R. Glogner, a resident of Freiburg, in the Kingdom of Prussia, German Empire, on January 27, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 736,381 were granted thereon upon Aug. 18, 1903.

Israel F. Good, a resident of Allentown, Pennsylvania, on October 1, 1902, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters Patent No. 745,960 were granted thereon upon December 1, 1903.

Guillaume D. Delprat, a resident of Broken Hill, Australia, on January 2, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 768,035 were granted thereon upon August 23, 1904.

Cosmo Kendall, a resident of Upper Norwood, Surrey, England, on July 21, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 771,075 were granted thereon upon September 27, 1904.

Charles V. Potter, a resident of Balaclava, Victoria, Australia, on January 14, 1902, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 776,145 were granted thereon upon November 29, 1904.

Arthur E. Cattermole, a resident of Highgate, London, England, on September 28, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 777,273 were granted thereon upon Dec. 13, 1904.

Arthur E. Cattermole, Henry L. Sulman and Hugh F. Kirkpatrick-Picard, all residents of London, England, on March 29, 1904, deposited and filed in the United States Patent Office their application for Letters Patent of the United States, and that Letters Patent No. 777,274 were granted thereon upon December 13, 1904.

Arthur E. Cattermole, Henry L. Sulman and Hugh F. Kirkpatrick Picard, all residents of London, England, on March 29, 1904, deposited and filed in the United States Patent Office their application for Letters Patent of the United States, and that Letters Patent No. 788,247 were granted thereon upon April 25 1905.

Henry L. Sulman and Hugh F. Kirkpatrick-Picard, residents of London, England, on October 5, 1903 deposited and filed in the United States Patent Office their application for Letters Patent of the United States, and that Letters Patent No. 793,808 were granted thereon upon July 4, 1905.

Alfred Schwarz, a resident of New York City, New York, on April 19, 1905, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters Patent No. 807,501 were granted thereon upon December 19, 1905.

Alfred Schwarz, a resident of New York City, New York, on May 27, 1904, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters Patent No. 807,503 were granted thereon upon December 19, 1903.

Edmund B. Kirby, a resident of Rossland, Canada, on December 14, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 809,959 were granted thereon upon January 16, 1906.

Edmund B. Kirby, a resident or Rossland, Canada, on December 17, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 838,626, were granted thereon upon December 18, 1906.

Also patented or described and contained in other Letters Patent, the dates, numbers, and grantees of which this defendant is not now able to specify, but prays to be allowed hereafter to add by amendment of this answer or otherwise, if it shall become necessary.

Also illustrated and described in printed publications, the names and dates of which defendant is not able to specify, but prays to be allowed hereafter to add to this answer by amendment or otherwise, if it shall become necessary.

III.

This defendant avers that for the purpose of deceiving the public the description and specification filed by the said patentees in the Patent Office was in some particulars made to contain more than the whole truth relative to their alleged invention or discovery and more than is necessary to produce the desired effect, and that in other particulars the said description and specification was made to contain less than the whole truth relative to their alleged invention or discovery.

IV.

This defendant says that the said patentees, Henry

Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot and said plaintiff herein, Minerals Separation, Limited, have admitted that the alleged invention which said Letters Patent No. 835,120 purport to embrace, and each and every material and substantial part thereof, was old and known to others prior to their alleged invention and discovery thereof, and have stated that said alleged invention was the invention of others, and that said patentees made said admissions and statements in the following described Letters Patent, and in the applications therefor and proceedings in the United States Patent Office relating thereto, and also in other patents, documents and writings.

LETTERS PATENT OF THE UNITED STATES

793,808, Sulman & Kirkpatrick-Picard, application filed October 5, 1903, patented July 4, 1905.

835,143, Henry L. Sulman, application filed October 20, 1905, patented November 6, 1906.

835,479, Sulman, Kirkpatrick-Picard and Ballot, application filed May 20, 1905, patented November 6, 1906.

879,985, Sulman, Kirkpatrick-Picard & Ballot, application filed February 20, 1905, patented February 25, 1908.

LETTERS PATENT OF GREAT BRITAIN.

17,109, August 6, 1903, Cattermole, Sulman & Kirkpatrick-Picard.

20,419, September 22, 1903, Sulman & Kirkpatrick-Picard.

5,260, March 13, 1905, Sulman, Kirkpatrick-Picard & Ballot.

19,709, September 19, 1905, Sulman.

26,712, December 21, 1905, Sulman, Kirkpatrick-Picard & Ballot.

23,870, October 14, 1910, Minerals Separation, Limited, and Nutter.

23,949, October 15, 1910, Nutter, Hoover, and Minerals Separation, Limited.

V.

Defendant, further answering, says that the plaintiff herein is not entitled to the relief prayed for in its bill of complaint, without this that there is any other matter, cause, or thing in the said bill of complaint contained, material or necessary for this defendant to make answer unto, and not hereinbefore sufficiently answered, confessed or avoided, traversed or denied, is true; all of which this defendant is ready to aver, maintain and prove as this Honorable Court shall direct, and prays to be hence dismissed with its costs in this behalf most wrongfully sustained.

THOMAS F. SHERIDAN,
WALTER A. SCOTT,
J. BRUCE KREMER,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
DISTRICT OF MONTANA,
COUNTY OF SILVER BOW,—ss.

J. L. Bruce, being first duly sworn on oath, deposes and says:

That he is an officer of the defendant, Butte and Superior Copper Company, Limited, to-wit: General Manager thereof, and makes this verification for and on behalf of defendant; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein alleged on information and belief, and as to those matters he believes it to be true.

J. L. Bruce.

Subscribed and sworn to before me this 16th day of April, 1913

C. K. Tuohy,

Notary Public in and for the State of Montana, residing at Butte, Montana. My commission expires July 26th, 1915.

(Notarial Seal.)

FILED: April 17, 1917.

Geo. W. Sproule, Clerk,
By H. H. Walker, Deputy.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATIONS, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte & Superior Copper Company, Limited,

Defendant.

PLEASE TAKE NOTICE that on April 30th, 1917, at the opening of the Court we will move on the record and proceedings herein for leave to file the Supplemental and Amended Bill of Complaint, copy of which is annexed hereto.

April 26, 1917.

Yours etc.

Odell W. McConnell
Henry D. Williams,
Solicitor and of Counsel for Plaintiffs.

To:

J. Bruce Kremer, Esq.
Walter A. Scott, Esq.
Thomas F. Sheridan, Esq.
Attorneys and of Counsel for Defendant.

(Copy received Apr. 26, 1917).

Thomas F. Sheridan,
Of Solicitor for Defendant.

And thereafter on May 1st, 1917, the supplemental and amended bill of complaint of plaintiffs was filed, being as follows, to-wit:

In the District Court of the United States, for the District of Montana.

In Equity.

SUPPLEMENTAL AND AMENDED BILL OF COMPLAINT.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

Now comes the plaintiffs above named, and, with leave of Court first had and received, file this their Supplemental and Amended Bill of Complaint and allege by way of Supplement and Amendment:

1. That heretofore, to-wit, on the 10th day of October, 1913, the plaintiff Minerals Separation, Limited,

filed its bill in this court, alleging the issue and its ownership, of Letters Patent 835,120 and infringement by the above named defendant, and the suit of said plaintiff and another against James M. Hyde and participation therein by the defendant here and the conduct of the defendant here so as to be estopped thereby, and praying for an injunction and accounting of profits and damages, and that said defendant filed an Answer and Amended Answers thereto. Reference is here made to said Bill and Answers for a more complete statement of the contents thereof.

2. That the plaintiff, Minerals Separation American Syndicate Limited, is a corporation duly organized and existing under and by virtue of the laws of Great Britain and having its principal office in London, England, and that the plaintiff, Minerals Separation North American Corporation, is a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, having its principal office and place of business in the Continental Building in the City of Baltimore in the State of Maryland.

3. That by an instrument in writing dated the tenth day of October, 1910 (which, or a duly certified copy thereof, the plaintiffs will produce as the Court may direct) Minerals Separation, Limited, plaintiff, granted to Minerals Separation American Syndicate Limited, plaintiff (together with other things) the sole and exclusive right, license, power and authority to apply, use and exercise in the United States of America, the invention and process of said Letters Patent No. 835,120 for the term of two years, with the privilege of exten-

sion for a further period of one year; that said privilege of extension was exercised, and that said exclusive license expired by affluxion of time on the tenth day of October, 1913; that by an instrument in writing dated the eighth day of July, 1913 (which, or a duly certified copy thereof, the plaintiffs will produce as the Court may direct, and a copy of which is annexed hereto as Exhibit A), Minerals Separation Limited, plaintiff, entered into an agreement of sale and purchase with Minerals Separation American Syndicate (1913) Limited, a corporation duly organized and existing under and by virtue of the laws of Great Britain, by which Minerals Separation, Limited, agreed to sell and Minerals Separation American Syndicate (1913) Limited agreed to purchase (along with other things) the entire beneficial interest in the said Letters Patent 835,120, the purchase to be completed on or before the tenth day of October, 1913; that by mutual arrangement the completion of the purchase by the assignment of the said Letters Patent 835,120 (and others) was deferred pending the litigation against James M. Hyde and other litigation; that by mutual arrangement the completion of the payment of the full consideration to Minerals Separation, Limited, plaintiff, was deferred until on or about the sixth day of October, 1916, and thereupon the entire beneficial interest in said Letters Patent 835,120 vested in said Minerals Separation American Syndicate (1913) Limited; that by an instrument in writing dated the 7th day of December, 1916 (which, or a duly certified copy thereof the plaintiffs will produce as the Court may direct, and a copy of which is annexed

hereto as exhibit B) Minerals Separation American Syndicate (1913) Limited sold, assigned and transferred to Minerals Separation North American Corporation, plaintiff, all the right, title and interest in and to said Letters Patent 835,120 to which it then was, or might thereafter become entitled, and all moneys due and to grow due, royalties due and to grow due, claims and demands and things in action, of Minerals Separation American Syndicate (1913) Limited; that by virtue of the premises the plaintiffs became and now are the sole owners of said Letters Patent 835,120 and of all claims and demands and rights of action for profits and damages for infringements of said Letters Patent from the date of issue thereof.

4. That in the suit of Minerals Separation, Limited, and another against James M. Hyde, referred to in paragraph 7 of the Bill of Complaint, the Circuit Court of Appeals of the Ninth Circuit in May, 1914, entered its decree reversing the decree of this Court; that thereafter and on the 13th day of January, 1917, the Supreme Court of the United States issued its Mandate reversing the decree of the Circuit Court of Appeals of the Ninth Circuit and modifying and affirming the decree of this Court and directing the entry of a decree holding claims 1, 2, 3, 5, 6, 7, and 12 of said Letters Patent 835,120 valid and infringed and claims 9, 10 and 11 invalid, as appears by said Mandate on file in this Court, a copy of which is annexed hereto as Exhibit C.

5. That on the 28th day of March, 1917, Minerals Separation, Limited, plaintiff, as the sole assignee of the patentees of said Letters Patent 835,120 for the

whole of the United States and the territories and possessions thereof, in view of the aforesaid decision and Mandate of the Supreme Court of the United States, and under and pursuant to the laws for such case made and provided, and without unreasonable neglect or delay, entered its disclaimer of so much of the thing patented by claims 9, 10 and 11 of said Letters Patent 835,120 as it did not choose to hold or claim by virtue of said Letters Patent, all as appears by said disclaimer a certified copy of which is ready here in Court to be produced as the Court may direct, and a copy of which is hereto annexed as Exhibit D.

6. That on the 16th day of April, 1917, plaintiffs there waiving accounting and filing proof of said disclaimer and not asking for costs, a final decree was entered in said suit of Minerals Separation, Limited, and another, against James M. Hyde, decreeing the validity of claims 1, 2, 3, 5, 6, 7 and 12 of said Letters Patent 835,120, and infringement thereof by defendant, and a perpetual injunction, as appears by the said decree on file in this court, a certified copy of which is ready to be produced as the court may direct, and a copy of which is annexed hereto as exhibit E.

7. That the processes recited in claims 9, 10 and 11 of said Letters Patent 835,120 as limited by said disclaimer were new and original inventions of the patentees thereof, and that said claims 9, 10 and 11 of said Letters Patent, 835,120 as limited by said disclaimer are good and valid, and that the Butte and Superior Mining Company, defendant, subsequent to the issue of said Letters Patent 835,120 and prior to the filing of the Bill of Complaint herein and without the

license and allowance of the plaintiffs or either of them, employed processes of concentrating powdered ores embodying and containing said invention or inventions in infringement of said claims 9, 10 and 11 of said Letters Patent 835,120 as limited by said disclaimer, as well as the invention or inventions of claims 1, 2, 3, 5, 6, 7 and 12 of said Letters Patent, and continues so to do, and has encouraged and induced others so to infringe.

And plaintiffs allege by way of amendment to and in substitution of paragraph 8 of the Bill of Complaint:

8. On information and belief, that prior to the beginning of the acts of infringement complained of in said suit of Minerals Separation, Limited, and another, against James M. Hyde, the Butte and Superior Mining Company, defendant here, invited said James M. Hyde to test the applicability of flotation to the ores of the Butte and Superior Mining Company; that thereafter Butte and Superior Mining Company investigated through its own attorneys and counsel the matter of infringement of the patents of Minerals Separation, Limited, by such application, and thereafter entered into an agreement with said James M. Hyde whereby Hyde was to give his knowledge and time to working out such application of flotation to the ores of the Butte and Superior Mining Company and was to superintend the erection and operation of a plant to that end and was to be paid expenses and to have a large additional payment if the enterprise succeeded, and that it was further agreed between said Butte and Superior Mining Company and said Hyde that said Butte and Su-

perior Mining Company would defend said Hyde and hold him harmless in case he should be sued by Minerals Separation, Limited, for infringement by reason of the erection and operation of such plant for said Butte and Superior Mining Company; that the acts of said Hyde complained of in said suit of Minerals Separation, Limited, and another against James M. Hyde as the acts of infringement there, consisted in the operation of the plant so erected and operated by said Hyde for the said Butte and Superior Mining Company; that said acts of infringement by Hyde were conducted in the mill of the said Butte and Superior Mining Company, with apparatus and ingredients belonging to the said Company, upon the ore of said Company, and for the benefit and advantage of the said company; that the said acts of infringement by Hyde were conducted by the employees of the Butte and Superior Mining Company under the superintendence of Hyde and that in those operations Hyde was himself an employee of the said company; that the Butte and Superior Mining Company conducted and controlled the defense from the beginning to the end of said suit of Minerals Separation, Limited, and another, against James M. Hyde, and paid all the expenses thereof and paid the said James M. Hyde for his expenses in assisting in the defense of said suit; that subsequent to the beginning of the said suit of Minerals Separation, Limited, and another, against Hyde the latter applied for and subsequently obtained a patent No. 1022085 for certain features involved in the said operations in the mill of Butte and Superior Mining Company charged as the act of infringement there, but said patent was granted and

issued for what was not the invention of said Hyde or any invention over the art and the application for said patent was an after thought and a sham and a device to aid in the defense of said suit; that long subsequently and after the said suit was argued at final hearing in this court the said Hyde granted to said Butte and Superior Mining Company an exclusive license under said patent for the County of Silver Bow, State of Montana, for and in consideration of said company's paying all the expenses of the defense of said suit and holding Hyde harmless therein, but said license was without value and said consideration was paid for nothing and the transaction was an after thought and a sham and a device to avoid the legal effect of the actual relation of Butte and Superior Mining Company to the defense of said suit; that the process introduced by said Hyde into the Butte and Superior Mining Company's plant was continued in use by the said company, the defendant here, by and through other employees and under other superintendence and in other plants; that to the extent that the said Hyde was concerned in the said operations decreed in said Hyde suit to be an infringement of said Letters Patent 835,120 this defendant was the master and the principal and was a joint tort feasor with said Hyde; that the defendant here conducted the defense of Hyde in said suit against Hyde for its own protection here and with the knowledge of the plaintiffs and has had its day in court, in so far as concerns the issues there raised and determined, and is bound by the said final decree entered against the said James M. Hyde in said case on April 16th, 1917, to that extent, that is to say, to the extent

that the Letters Patent in suit No. 835,120 are valid as to claims 1, 2, 3, 5, 6, 7 and 12, and were infringed by the acts and operations there complained of.

And plaintiffs allege by way of further Supplement:

9. That the aforesaid final decree entered on April 16th, 1917, in said suit of Minerals Separation, Limited, against James M. Hyde is final and determinative against the defendant here as to the issue of validity of claims 1, 2, 3, 5, 6, 7 and 12 of said Letters Patent 835,120, and as to the issue of infringement of said claims by the acts and operations there complained of.

The plaintiffs therefore pray:

I. For a permanent injunction and an injunction pendente lite restraining the defendant, its confederates, associates, officers, servants, agents, clerks and workmen from any installation or use in any manner of the said patented invention and particularly claims 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12 thereof, or any part thereof, in violation of the rights of the plaintiffs as aforesaid, and from encouraging and inducing others to infringe the said Letters Patent, and from defending other infringers of said Letters Patent or reimbursing them the expense of defending against said Letters Patent, in whole or in part, or otherwise aiding or abetting others to install or use processes of ore concentration in infringement of said Letters Patent.

II. For an accounting of profits and damages and that any damages assessed may be tripled.

III. For such other and further relief as the circumstances of the case may require.

MINERALS SEPARATION, LTD.

By JOHN BALLOT, Chairman.

MINERALS SEPARATION AMERICAN SYNDICATE, LTD.

By JOHN BALLOT, Chairman.

MINERALS SEPARATION NORTH AMERICAN CORPORATION,

By JOHN BALLOT, ~~Chairman.~~ President

Henry D. Williams, Wm. Houston Kenyon, of Counsel; Odell W. McConnell, Solicitor and of Counsel.

UNITED STATES OF AMERICA
STATE OF MONTANA
COUNTY OF SILVER BOW,—ss:

JOHN BALLOT, being duly sworn, deposes and says:

That he is Chairman of the Board of Directors of Minerals Separation, Limited, one of the plaintiffs named in the foregoing Supplemental and Amended Bill of Complaint, and that he is Chairman of Minerals Separation American Syndicate, Limited, another one of the said plaintiffs, and that he is also President of Minerals Separation North American Corporation, the third other plaintiff named in the foregoing Supplemental and Amended Bill of Complaint; that he has read the same, and knows the contents thereof, and that the same is true of his own knowledge, except as to the

matters therein alleged on information and belief, and as to those matters he believes it to be true.

Subscribed and sworn to before me this 26th day of April, 1917.

JOHN G. BAILEY, a Notary Public in and for the State of Montana, residing at Butte, Montana.

My commission expires 12-10-1917.

(Notarial Seal.)

EXHIBIT "A"

AGREEMENT OF JULY 8, 1913.

BETWEEN

MINERALS SEPARATION LIMITED

AND

MINERALS SEPARATION AMERICAN SYNDICATE (1913), LIMITED.

AN AGREEMENT made the eighth day of July, One Thousand Nine Hundred and Thirteen BETWEEN MINERALS SEPARATION LIMITED having its registered office at 62 London Wall in the City of London (hereinafter called the company) of the one part and MINERALS SEPARATION AMERICAN SYNDICATE (1913) LIMITED having its registered office at 62 London Wall aforesaid (hereinafter called the Syndicate) of the other part.

WHEREAS the Syndicate was incorporated on the

twenty-seventh day of June One Thousand Nine Hundred and thirteen under the Companies (Consolidation) Act 1908 with a nominal capital of Two hundred and fifty thousand pounds divided into One hundred and twenty-five thousand A shares of One pound each and Two hundred and fifty thousand B shares of Ten shillings each; AND WHEREAS by Clause 2 of the Articles of Association of the Syndicate it is provided that the Syndicate shall enter into the Agreement therein referred to being this Agreement NOW it is hereby agreed as follows:

1. The Company shall sell and the Syndicate shall purchase:

First—The letters patent and rights mentioned in the schedule hereto but subject to certain licenses granted by the company the dates of which and the names of the licensees mentioned therein are as follows:

(A) Twenty-fifth June One thousand nine hundred and twelve, The Cuba Copper Company.

(B) Nineteenth November, One thousand nine hundred and twelve, Britannia Mining and Smelting Company, Limited, as modified by letter dated seventeenth December One thousand nine hundred and twelve from the Company to the said Britannia Mining and Smelting Company Limited.

(C) Sixteenth January One thousand nine hundred and thirteen the Silverton Mines Limited and Robert Isinger.

(D) Twenty seventh February One thousand nine hundred and thirteen the Ducktown Sulphur & Copper and Iron Company Limited.

(E) Tenth April One thousand nine hundred and thirteen The Inspiration Consolidated Copper Company.

(F) Seventh May One thousand nine hundred and thirteen The Elm Orlu Mining Company.

(G) Seventh May One thousand nine hundred and thirteen The Colusa Parrot Mining and Smelting Company.

(H) Thirteenth May One thousand nine hundred and thirteen William B. McDonald and Louis S. Nobel.

Secondly: The benefit and rights of the Company of and under the said licenses and of any other licenses that may be granted prior to the completion of the purchase and Thirdly:—the exclusive right so far as the company can confer the same to apply for and obtain in the Republic of Cuba and the Philippine Islands patents in connection with any of the inventions comprised in the letters patent and applications mentioned in the schedule hereto and generally in connection with processes and apparatus for separating different pulverulent materials by oil selection gaseous flotation or other surface tension phenomena.

2. Part of the consideration for the said sale shall be the sum of Ninety three thousand seven hundred and fifty pounds which shall be paid and satisfied by the allotment to the company or its nominee or nominees of One hundred and eighty seven thousand five hundred fully paid B shares of Ten shillings each in the Capital of the Syndicate.

3. As the residue of the consideration for the said sale the Syndicate shall indemnify the Company against all liability and obligations of the Company under or in

respect of any of the licenses granted by them and particulars of which are set out in Clause 1 hereof and shall also indemnify the Company against all liability and obligations of the Company under or in respect of all costs and charges already or hereafter to be incurred by the Company in connection with applying for and taking out patents in the said Republic of Cuba and the Syndicate shall further indemnify the Company against the liabilities of the Company under a letter dated second day of March One thousand nine hundred and ten from the company to one James M. Hyde and against all sums which the Company may have been ordered and may be ordered to pay to the said James M. Hyde in connection with certain litigation pending between the company and the said James M. Hyde in the United States of America and against the costs, charges and expenses of the Company in connection with the said litigation and the Syndicate shall at once repay to the Company all disbursements already made by the Company on account thereof or in connection therewith. The Syndicate shall be entitled to receive all damages and any other profits or benefits which may be derived from or in connection with the said litigation.

The purchase shall be completed on or before the tenth day of October One thousand nine hundred and thirteen at the registered office of the Syndicate when One hundred and thirty seven thousand five hundred fully paid B shares of Ten shillings each in the Capital of the Syndicate part of the said One hundred and eighty seven thousand five hundred fully paid B shares shall be allotted the Company or its nominees and the

Company and all other necessary parties if any shall at the expense of the Syndicate, execute and do all assurances and things for vesting in the Syndicate or as it shall direct the premises mentioned in the schedule hereto and giving to the Syndicate the full benefit of this Agreement as shall be reasonably required. As to fifty thousand fully paid B shares of Ten shillings each in the Capital of the Syndicate the balance of the said One hundred and eighty seven thousand five hundred B shares the same shall be allotted to the Company or its nominees at the rate of Two shares for every one "A" share of one pound each in the initial capital of the Syndicate part of the last twenty five thousand A shares in such capital which shall be hereafter allotted that is to say when one of such "A" shares shall be alloted there shall be allotted to the company or its nominees Two of such fully paid "B" shares. No new shares in the Capital of the Syndicate shall be created or issues until the whole of the shares in the initial capital of the Syndicate shall have been allotted.

5. The Company shall with all convenient speed and at cost price communicate to the Syndicate or its assigns all improvements, additions and new discoveries which it shall make or acquire or be interested in either alone or jointly with others in connection with any of the inventions comprised in the letters patent mentioned in the schedule hereto and generally in connection with processes and apparatus for separating pulverulent materials by oil selection gaseous flotation or other surface tension phenomena and shall give to the Syndicate or its assigns as full information as may be possible as

to the exact mode of working and using such improvements, additions and new discoveries but any plans, drawings and models required by the Syndicate or its assigns in connection therewith shall be furnished to the Syndicate or its assigns on payment of out of pocket expenses of the Syndicate or its assigns execute and do all such documents and things as may be requisite for enabling the Syndicate or its assigns to obtain letters patent in the United States of America and the Dominion of Canada, the Republic of Mexico and the Republic of Cuba and the Philippine Islands for such improvements, additions and new discoveries.

6. The Syndicate shall with all convenient speed and at cost price communicate to the Company or its assigns all improvements, additions and new discoveries which it shall make or acquire or be interested in either alone or jointly with others in connection with any of the inventions comprised in the letters patent and applications mentioned in the schedule hereto and generally in connection with processes and apparatus for separating different pulverulent materials by oil selection gaseous flotation or other surface tension phenomena and shall give to the company or its assigns as full information as possible as to the exact mode of working and using such improvements, additions and new discoveries but any plans, drawings and models required by the Company or its assigns in connection therewith shall be furnished to the Company or its assigns on payment of out of pocket expenses and shall from time to time at the request and at the expense of the company or its assigns execute and do all such documents and things as may be requisite for enabling

the company or its assigns to obtain letters patent elsewhere than in the United States of America, the Dominion of Canada, the Republic of Mexico, the Republic of Cuba and the Philippine Islands, for such improvements, additions and new discoveries.

7. The Syndicate shall not dispute the validity of any of the patents and patent rights for the time being belonging to the Company nor in any manner support any litigation against the Company. The Company and the Syndicate shall mutually assist each other as far as possible (except financially) in all litigation against infringers or alleged infringers of the said Letters Patent or in respect of Letters Patent which may from time to time be held by or belong to either of them. The Company and the Syndicate shall also mutually assist each other in negotiating for the acquisition upon the best possible terms of new inventions and discoveries and patents for the same or improvements thereof by third parties which it may be considered desirable either to acquire or control in the United States of America, the Dominion of Canada, the Republic of Mexico, the Republic of Cuba, or the Philippine Islands or any other part of the world

8. The Syndicate shall pay all the costs, charges and expenses of and incident to the preparation and execution of this agreement and of the Syndicate's memorandum and Articles of Association and shall also pay all stamp fees and legal and other expenses incident to the formation and registration of the Syndicate.

9. The Syndicate shall cause this Agreement to be duly filed with the Registrar of Companies pursuant to

Section 88 of the Companies (Consolidation) Act 1908 and also in the case of shares allotted to nominee shall cause a sufficient contract to be filed constituting the title of such nominees.

IN WITNESS WHEREOF the Companies parties hereto have caused their respective common seals to be hereto affixed the day and year first above written.

THE SCHEDULE ABOVE REFERRED TO.

Part 1.

1. The benefit of the following Letters Patent granted in respect of the United States of America.

No.	Date.	Name.
777273	13-12-04	Cattermole
763259	21- 6-04	ditto
763260	21- 6-04	ditto
809959	16- 1-06	E. B. Kirby
838626	18-12-06	ditto
763749	28- 6-04	Goyder & Laughton
784999	14- 3-05	ditto
864597	27- 8-07	De Bavay
912783	27- 8-07	ditto
776145	29-11-04	C. V. Potter
1045970	3-12-12	Potters. S. O. T. Co.
ser		
683005	11- 3-12	L. Bradford
793808	4- 7-05	Sulman & Picard
788247	25- 4-05	Cattermole, Sulman & Picard
777274	13-12-04	ditto

879985	25- 2-08	H. L. Sulman
835120	6-11-06	Sulman, Picard & Ballot
835143	6-11-06	H. L. Sulman
835479	6-11-06	Sulman, Picard & Ballot
902018	27-10-08	H. L. Sulman & E. A. Sulman
962678	28- 6-10	Greenway Sulman & Higgins
953746	5- 4-10	T. J. Hoover
ser		
587621	17-10-10	Greenway & Lavers
ser		
647239	1- 9-11	Nutter & Lavers
ser		
636245	30- 6-11	H. H. Greenway
ser		
665900	4-12-11	E. H. Nutter
ser		
651188	25- 9-11	Nutter & Hoover
ser		
712319	30- 7-12	Chapman & Tucker
ser		
723327	1-10-12	J. Hebbard
738586	26-12-12	Chapman & Tucker
ser		
732386	19-12-11	A. C. Howard
955012	12- 5-10	H. L. Sulman
979857	27-12-10	T. J. Hoover
		Broadbridge & Howard
ser		
768374	17- 4-13	Greenway & Lowry
ser		
766250	8- 5-13	Chapman

2. The benefit of all extensions and prolongations of the terms and privileges granted by any such patents as aforesaid.

Part 2.

1. The benefit of the following Letters Patent granted in respect to the Dominion of Canada viz:

No.	Date.	Name.
87785	14- 6-04	Cattermole
87786	14- 6-04	ditto
76621	8- 7-02	C. V. Potter
121676	2-11-09	Potter S. O. T. Co. (T. J. Greenway)
169146	13- 3-12	ditto
87700	7- 6-04	Sulman & Picard
94516	1- 8-05	Cattermole, Sulman & Picard
96183	21-11-05	Sulman, Picard & Ballot
96182	21-11-05	ditto
99743	26- 6-06	ditto
127397	9- 8-10	Greenway, Sulman & Higgins
129819	13-12-10	T. J. Hoover
134271	11- 7-11	Greenway & Lavers
135089	22- 8-11	Sulman & Picard
137404	13-12-11	Nutter & Lavers
142607 ser	3- 9-12	H. H. Greenway
166434	18-11-11	Nutter & Hoover
147431 ser	22- 4-13	Chapman & Tucker
176341	17- 1-13	J. Hebbard

ser		
175775	26-12-12	Chapman & Tucker
147432	22- 4-13	A. C. Howard
94718	15- 8-05	S. S. & Steele
129820	13-12-10	T. J. Hoover
		Broadbridge & Howard
ser		
179523	21-5-13	Greenway & Lowry

2. The benefit of all extensions and prolongations of terms and privileges granted by any such patents as aforesaid.

Part 3.

1. The benefit of the following Letters Patent granted in respect of the Republic of Mexico.

No.	Date.	Name.
3397	15-12-03	Cattermole
4268	12- 1-05	DeBavay
4267	12- 1-05	ditto
4269	12- 1-05	ditto
3605	24- 3-04	C. V. Potter
9362	14- 7-09	Potter S. O. T. Co.
12781	12- 3-12	Potter S .O. T. Co.
3276	12- 4-04	Cattermole, Sulman & Picard
4908	14- 9-05	Sulman, Picard & Ballot
5560	21- 4-06	ditto
4907	14- 9-05	ditto
5561	21- 4-06	ditto
4622	27- 5-05	S. Steele & Steele
4635	1- 6-05	ditto

5603	26- 4-06	Sulman, Picard & Ballot
5602	26- 4-06	ditto
9422	26- 7-09	Minerals Separation Ld.
9592	9- 9-09	ditto
11087	19-10-10	ditto
11898	20- 7-11	ditto
11943	6- 7-11	ditto
12291	31-10-11	ditto
12050	11- 8-11	ditto
12290	31-10-11	ditto
13316	14- 8-12	ditto
13820	8- 1-13	ditto
13749	17-12-12	ditto
13991	6 3-13	ditto
		Broadbridge & Howard
		Greenway & Lowry

2. The benefit of all extensions and prolongations of the terms and privileges granted by any such patents as aforesaid.

Part 4.

1. The benefit of the following letters patent and application for Letters Patent granted in respect of the Republic of Cuba, viz:

No.	Date	Name
1521	2-5-11	
1520	2-5-11	
Application for patent filed 26-3-13		
Minerals Separation Limited		
ditto		
ditto		

2. The benefit of all extensions and prolongations of the terms and privileges granted by any such patents as aforesaid.

The Common seal of Minerals Separation Ltd. was hereto affixed in the presence of

JOHN BALLOT
W. W. WEBSTER } Directors (Seal)

E. WILLIAMS, Secretary.

The Common Seal of Minerals Separation American Syndicate (1913) Limited was hereto affixed in the presence of

EMIL BEER
H. A. KROHN } Directors (Seal)

E. WILLIAMS, Secretary.

EXHIBIT "B"

BILL OF SALE

From

MINERALS SEPARATION AMERICAN SYNDICATE (1913), LIMITED

To

MINERALS SEPARATION NORTH AMERICAN CORPORATION.

KNOW ALL MEN BY THESE PRESENTS

That Minerals Separation American Syndicate (1913) Limited, a company incorporated under the Companies Consolidated Act 1908, having its registered office at No. 62 London Wall, in the city of London, England, for and in consideration of five hundred thousand (500,000) shares, without nominal or par value, of the stock of Minerals Separation North American Corporation, a corporation duly organized and existing under the laws of the State of Maryland, whose principal office is in the Continental Building, in the City of Baltimore, in the State of Maryland, of the assumption by said Minerals Separation North American Corporation of all the debts, liabilities and obligations, contractual or otherwise, of said Minerals Separation American Syndicate (1913), Limited, and for other valuable considerations to it moving by said Minerals

Separation North American Corporation, the receipt whereof is hereby acknowledged, has bargained, sold, assigned, transferred and set over, and by these presents does bargain, sell, assign, transfer and set over to said MINERALS SEPARATION NORTH AMERICAN CORPORATION, all the patents (subject, however, to all licenses, rights and options heretofore granted in respect thereto), processes, licenses, inventions, applications for patents and all rights, contracts, agreements, concessions, privileges, shares of the capital stock of corporations now owned by said Minerals Separation American Syndicate (1913), Limited, and all the right, title and interest in and to patents (subject, however, to all licenses, rights and options heretofore granted in respect thereto), processes, licenses, inventions and applications for patents, and all rights, contracts, agreements, concessions, privileges, shares of the capital stock of corporations to which said Minerals Separation American Syndicate (1913), Limited, is now or to which it shall hereafter become entitled by virtue of any existing agreements or otherwise, and all the cash on hand and in banks, whether in the Kingdom of Great Britain, the United States of America, or elsewhere, promissory notes, bills of exchange, drafts, outstanding accounts, bills receivable, moneys due and to grow due, royalties due and to grow due, claims and demands and things in action, office furniture and fixtures and other chattels, and all the business, property and assets of Minerals Separation American Syndicate (1913), Limited, of every sort, nature or description, including the good will of its business as a going concern;

TO HAVE AND HOLD the same unto MINERALS SEPARATION NORTH AMERICAN CORPORATION, its successors and assigns, to its and their own use absolutely and forever; SUBJECT, HOWEVER, to the payments, discharges and performances as the case may be, of all the debts, liabilities and obligations, contractual or otherwise, of Minerals Separation American Syndicate (1913), Limited.

And for the considerations aforesaid, said Minerals Separation American Syndicate (1913), Limited, covenants and agrees with said Minerals Separation North American Corporation and its successors and with all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in or to the property hereby sold, assigned and transferred, that it shall and will at any time or from time to time hereafter, upon request of said Minerals Separation North American Corporation, its successors or assigns, but at the cost and expense of said Minerals Separation North American Corporation, its successors or assigns, make, do, execute, acknowledge or deliver, or cause to be made, done, executed, acknowledged or delivered, all and every such further and other lawful acts, deeds, bills of sale, transfers, assignments and assurances in the law, whether in the United States of America, Kingdom of Great Britain or any other country, for the better and more effectual vesting and confirming the property hereby bargained, sold, assigned, transferred and set over, or so intended to be, in and to said Minerals Separation North American Corporation, its successors and assigns forever, as by said Minerals Separation North American Cor-

poration, its successors or assigns, or its or their counsel learned in the law shall be reasonably advised or required.

Annexed hereto, marked "A" and made part hereof, is a partial list of the patents and applications either owned by the Minerals Separation American Syndicate (1913), Limited, the vendor corporation, or in or to which it has any right, title or interest, and which is part of the property hereby transferred ~~to~~ or intended so to be.

Annexed hereto and made part hereof and marked "B" is a partial list of the licenses granted in respect of the patents either owned by the Minerals Separation American Syndicate (1913), Limited, the vendor corporation, or in which patents it has any right, title or interest.

IN WITNESS WHEREOF, MINERALS SEPARATION AMERICAN SYNDICATE (1913), LIMITED, has caused its name to be hereto affixed in fact, under and by virtue of a Power of Attorney dated October 11, 1916.

MINERALS SEPARATION AMERICAN SYNDICATE (1913), LIMITED,

By JOHN BALLOT,

Its Attorney in Fact.

STATE OF MARYLAND,

City of Baltimore—ss.

On December 17th, 1916, before me personally came John Ballot, the Attorney-in-Fact of Minerals Separation American Syndicate (1913), Limited, a Company organized under the laws of Great Britain, to me personally known and known to me to be the individual described in and who as such Attorney executed the within instrument and acknowledged that he executed the same as the act and deed of Minerals Separation American Syndicate (1913), Limited, therein described by virtue of a Power of Attorney duly executed by said Minerals Separation American Syndicate (1913), Limited, bearing date October 11, 1916, which Power of Attorney was exhibited to me.

EMMA L. BURKE,

(Seal) Notary Public.

"A"

PATENTS GRANTED IN RESPECT OF THE UNITED STATES OF AMERICA.

No.	763259	Classifier
"	763260	Separator and Classifier
"	763749	Separation of Minerals
"	776145	Potter
"	777273	Separator
"	777274	Soap and Granulation
"	784999	Separating and Concentrating
"	788247	Soap and Flotation
"	793808	Air Bubbles

No.	809959	Kirby Separator
"	835120	Oleic Acid Froth
"	835143	Boiling
"	835479	Super-Aerator
"	838626	Kirby Separator
"	864597	De Bavay
"	879985	Table Flotation
"	902018	Buddle
"	912783	De Bavay
"	953746	Froth Apparatus with Baffle
"	955012	Alcohol
"	962678	Solution
"	979857	Frothing Apparatus Agitator as Pump
"	1045970	T. J. Greenway
"	1064209	Staggered Spitz
"	1064723	Essential Oils
"	1067485	Fractional Flotation
"	1071784	Controlling the Flow of thick, pulpy Material
"	1079107	Sodium Bisulphate
"	1084196	Open Spitz
"	1084210	Agitator
"	1093463	Froth Trap
"	1099699	Copper Ores without Acid
"	1101506	Bradford
"	1102873	Doctored Water
"	1102738	Bi-chromate
"	1102874	Modifying during Grinding
"	1142821	Alkali & Bi-chromate
"	1142822	Littleford
"	1155815	Sub-Aerator

No. 1155816	Sub-Aeration Apparatus
" 1155836	Owen's Apparatus
" 1155861	Bubble Separation without oil
" 1170665	Acid Sludge
" 1170637	Sulphuric Acid Compounds
" 1157176	Owen's permanganate

APPLICATIONS

Ser. No. 262890	Air Flotation without Oil (abandoned)
" 766346	Metallic Sulphides
" 793270	Steam Spray
" 800966	Ferric Chloride
" 808986	Copper Precipitant
" 824765	Alkaline Float
" 831939	Flotation Process by Sub-Aeration
" 835812	Owen's Selective Flotation
" 843304	Sodium Carbonate
" 845086	Copper Precipitant
" 858737	Insufficient Acid
" 858738	Insufficient Frothing Agent
" 863097	Classifying
" 863098	Sizing
" 864230	Argol
" 872470	Aqueous Extract of Oil
" 14015	Electrical Relations (1)
" 20815	Hebbard's Coke
" 27098	Concentrated Alkali
" 34644	Electrical Relations (2)
" 37350	Seale & Shellshear
" 39927	Metallic Sulphides
" 40847	Bleaching Powder

Ser. No. 766346	Metallic Sulphides
" 74921	Martin's Inventions
" 74922	Martin's Inventions
" 91873	Horizontal Agitator
" 94339	Caustic Alkalis
" 105916	
Divisional from Ser. No. 14015	Electrical Relations (1)
Ser. No. 108208	
" 108209	
Divisionals from Ser. No. 766346	Metallic Sulphides
Divisional from Ser. No. 824765	Alkaline Float

PATENTS GRANTED IN RESPECT OF THE DOMINION OF CANADA.

No.	76621	Potter
"	87700	Air Bubbles
"	88785	~~Air Bubbles~~ Separator
"	87786	Classifier
"	94332	Di-electric Separator (Abandoned)
"	94516	Soap
"	94718	Concentrating Table
"	96182	Oleic Acid Froth
"	96183	Air Flotation
"	99743	Super-Aerator
"	121676	Potter's S. O. T. Limited (Abandoned)
"	127397	Solution
"	129819	Froth Apparatus with Baffle
"	129820	Agitator as Pump
"	134271	Essential Oils
"	135089	Livening Oxidised Ores
"	137404	Fractional Flotation
"	142607	Copper Ores without Acid
"	147431	Sodium Bisulphate
"	147432	Agitator
"	148275	Froth Trap
"	151479	Open Spitz
"	151480	Bi-chromate
"	151619	Bradford
"	151810	Steam Spray
"	157488	Modifying during Grinding
"	157603	Metallic Sulphides
"	157604	Copper Percipitant

No. 160692	Staggered Spitz
" 160693	Ferric Chloride
" 160694	Sub-Aerator
" 160846	Alkali & Bichromate
" 160847	Sodium Carbonate
" 160848	Insufficient Frothing Agent
" 160849	Insufficient Acid
" 160850	Alkaline Float
" 163608	Doctored Water
" 163707	Hebbard's Coke
" 164587	Bubble Separation without Oil
" 165390	Bleaching Powder
" 163936	Owen's Selective Flotation
" 166415	Electric Relations (1)
" 167474	Sulphuric Acid Compounds
" 167603	Acid Sludge

PATENTS GRANTED IN RESPECT OF THE DOMINION OF CANADA.

No. 167475	Concentrated Alkali
" 167476	Seale & Shellshear
" 160937	Owne's Permanganate
" 151810	Steam Spray
" 157604	Copper Precipitant
" 163936	Owen's Selective Flotation

APPLICATIONS

Ser. No. 202962	Caustic Alkalis
" " 204309	Soap Froth

PATENTS GRANTED IN RESPECT TO THE REPUBLIC OF MEXICO.

No.	3276	Air Bubbles
"	3397	Separator & Classifier
"	3605	Potter
"	3642	Soap
"	4267	Amalgamation Agreement
"	4268	" "
"	4269	" "
"	4622	Di-Electric Separator
"	4635	Concentrating Table
Re-issue "	4907	Oleic Acid Froth
	5561	"
Re-issue "	4908	Air Flotation
"	5560	"
"	5602	Super-Aerator
"	5603	Cylinders & Selective Flotation
"	9362	Potter's S. O. T., Ltd.
"	9422	Solution
"	9592	Froth Apparatus with Baffle
"	11087	Essential Oils
"	11943	Livening Oxidised Ores
"	11989	Frothing Apparatus Agitator as pump
"	12050	Copper Ores without Acid
"	12290	Froth Trap
"	12291	Fractional Flotation
"	12781	Potter's S. O. T., Ltd.
"	13316	Sodium Bisulphate
"	13749	Howard's Agitator
"	13820	Doctored Water
"	13991	Staggered Spitz

PATENTS GRANTED IN RESPECT OF THE REPUBLIC OF MEXICO.

No.	14196	Bi-chromate
"	14208	Metallic Sulphides
"	14344	Open spitz
"	14537	Modifying during grinding
"	14696	Steam spray
"	14749	Ferric chloride
"	14833	Sub-Aerator
"	14862	Copper Precipitant
"	14980	Owne's Selective Flotation
"	15030	Alkaline Float
"	15160	Alkali and Bi-chromate
"	15223	Insufficient Acid
"	15277	Insufficient Frothing Agent
"	15292	Sodium Carbonate
"	15513	Bubble Separation without Oil
"	15523	Sulphuric Acid Compounds
"	15524	Acid Sludge
"	15549 bis	Electrical Relations
"	15598	Hebbard's Coke
"	15656	Concentrated Alkali
"	15618	Bleaching Powder
"	15625	Seale & Shellshear
"	15029	Owen's Permanganate
"	14537	Modifying during Grinding
"	14696	Steam Spray
"	14749	Ferric Chloride
"	14833	Sub-Aerator
"	14862	Copper Precipitant
"	15160	Alkali & Bi-chromate

No.	15223	Insufficient Acid
"	15549 bis	Electrical Relations (1)
"	15656	Concentrated Alkalis
"	16003	Caustic Alkalis

PATENTS GRANTED IN RESPECT OF THE REPUBLIC OF CUBA.

No.	1520	Frothing Apparatus Agitator as Pump
"	1521	Alcohol & Solution
"	1946	Doctored Water
"	1976	Modifying during Grinding
"	2116	Copper Precipitant

"B"

VARIOUS LICENSES GRANTED.

Name of Licensee	Date of License
Cuba Copper Co.	25th June 1912
Britannia Mining & Smelting Co.	19th November, 1912
Silverton Mines	16th January 1913
Ducktown Sulphur Copper & Iron Co.	27th February, 1913
Inspiration Copper Co.	10th April 1913
Colusa Parrot Mining & Smelting Co.	7th May 1913
Elm Orlu Mining Co.	7th May 1913
Wm. Macdonald & Louis S. Noble	13th May 1913
Atlas Mining & Milling Co.	22nd May 1913
Consolidated Arizona Smelting Co.	19th September 1913
Old Dominion Copper Mining & Smelting Co.	26th September 1913

M. W. Atwater.....6th February 1914
Flint Mines Ltd.....16 February 1914
Mountain Copper Co.....11th March 1914
Mond Nickel Co. Ltd.....30th April 1914
Mineral Recovery Co.....19th May 1914
Phelps Dodge & Co.....11th June 1914
Engels Copper Mining Co.....18th June 1914
Standard Silver Lead Mining Co.....24th June 1914
Cusi Mining Co.....22nd January 1915
Anaconda Copper Mining Co.....1st February 1915
Weedon Mining Co.....3rd June 1915
Arizona Copper Co. Limited (Registered in England) .....11th June 1915
St. Joseph Lead Co.....16th August 1915
Doe Run Lead Co.....16th August, 1915
Utah Leasing Co.....24th August 1915
Portland Gold Mining Co.....29th November 1915
Chichagoff Mining Co.....29th November 1915
Deslodge Consolidated Lead Co.....1st January 1916
Sociedad Anonima des Metals Brockman & Co. Inc.....March 1916
Broadwater Mills Co.....14th March 1916
Arizona Copper Co. (Regd.) Clifton Greenlees Co. (Arizona).....21st March 1916
Greene Cananea Copper Co.....12th May 1916
Vindicator Consolidated Gold Mining Co.....26th June 1916
William Kent.....1st July 1916
Highland Valley Mining & Develop. Co. N. P. L.....10th Auust 1916
Ceylon Co.....15th August 1916

EXHIBIT "C"

UNITED STATES OF AMERICA, SS:

The President of the United States of America,

To the Honorable the Judge of the District Court of the United States for the District of Montana,

(Seal)

GREETING:

WHEREAS, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between James M. Hyde, appellant, and Minerals Separation, Limited, and Minerals Separation American Syndicate, Limited, appellees, No. 2346, wherein the decree of the said Circuit Court of Appeals, entered in said cause on the 4th day of May, A. D., 1914, is in the following words, viz:

"This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the District of Montana, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, reversed, with costs in favor of the appellant and against the appellees, and that this cause be, and hereby is remanded to the said District Court with instruction to dismiss the bill.

It is further ordered, adjudged, and decreed by this Court, that the appellant recover against the appellees

for his costs herein expended, and have execution therefor."

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of a writ of certiorari agreeably to the act of Congress, in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hundred and sixteen, the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged, and decreed by this Court that the decree of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, reversed with costs, and that the decree of the District Court of the United States for the District of Montana be, and the same is hereby, modified, as indicated in the opinion of this Court, and, as so modified, be, and the same is hereby, affirmed with costs; and that the said appellees, Minerals Separation, Limited, et al., recover against the said appellant One thousand nine hundred and eleven dollars and sixty-five cents for their costs herein expended and have execution therefor.

AND IT IS FURTHER ORDERED that this cause be, and the same is hereby, remanded to the said District Court.

December 11, 1916.

You, therefore, are hereby commanded that such execution and proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said writ of certiorari notwithstanding.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the thirteenth day of January, in the year of our Lord one thousand nine hundred and seventeen.

Clerk Court of Appeals ..... $ 676.40
Printing Record $1,215.25
Attorney 20.00
$1,911.65

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Endorsement.

File No. 24,396

SUPREME COURT OF THE UNITED STATES

No. 46 October Term, 1916,

Minerals Separation, Limited, et al. vs. James M. Hyde

MANDATE

Filed March 5, 1917,
Geo. W. Sproule, Clerk,
By H. H. Walker.
Deputy.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 191

Costs of Minerals Separation Limited, et al., in No. 46.

1914, October Term—Docketing cause and filing record, $5.00; appearance, .25; filing precipe .25; filing papers, 1.75; filing briefs, $5.00; submission, .20; order, .20; issuing writ of certiorari $5.00; filing return .25, continuance .25	18.15
1915, October Term—Transfer, $1.00; filing receipts .75; filing papers, 2.00; filing stipulation .25, continuance, .25....	4.25
1916, October Term—Transfer, $1.00; appearance, .25; filing precipe, .50; filing papers, 2.25; filing stipulation .25; filing briefs, $5.00; argument, .20; judgment, $1.00; filing same, .25; recording, .40; mandate, $5.00; preparing record for printer, etc., $637.50; cost of printing record, $1,215.25; attorney's docket fee, $20.00; costs and copy, .40	1,889.25
	1,911.65

Fee Book, page 24,396

Test: JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

EXHIBIT "D".

$10.00 REC'D.
MAR 28 H
1917
C.C.U.S.PAT OFFICE

UNITED STATES PATENT OFFICE.

Hon. Commissioner of Patents,

Sir:

Your Petitioner, Minerals Separation, Limited, a corporation organized and existing under the laws of Great Britain and having its principal place of business in London, England, hereby represents as follows:

1. That on November 6th, 1906, Letters Patent of the United States for Ore Concentration, No. 835,120, were granted to Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, of London, England, and your Petitioner is now the sole and exclusive owner of the said Letters Patent.

2. That by the decision of the Supreme Court of the United States in Minerals Separation, Limited, and Minerals Separation American Syndicate, Limited, vs. James M. Hyde, filed the 11th day of December, 1916, your Petitioner is advised that the said letters patent No. 835,120, in so far as concerns claims 9, 10 and 11 thereof, covers and includes more than the said inventors had a right to claim as new.

3. That the matter which the said patentees and your Petitioner are, in accordance with the said decision of the said court, not entitled to hold or claim by virtue

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8, 1917

of said claims 9, 10 and 11 of said Letters Patent No. 835,120, was included therein by mistake, and without fraudulent or deceptive intent, and without any wilful default or intent to defraud or mislead the public.

4. That the subject-matter not herein and hereby disclaimed is definitely distinguishable from the part or parts disclaimed herein, and is truly and justly the invention of the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, and is a material and substantial part of the thing patented.

Your Petitioner, therefore, for the purpose of complying with the requirements of the law in such case made and provided, and of disclaiming those parts of the thing patented which your Petitioner does not choose to claim or hold by virtue of said Letters Patent No. 835,120, does hereby disclaim from claims 9, 10 and 11 of said letters patent No. 835,120, any process of concentrating powdered ores excepting where the results obtained are the results obtained by the use of oil in a quantity amounting to a fraction of one per cent on the ore.

IN WITNESS WHEREOF your Petitioner has caused these presents to be signed and sealed by John Ballot, its duly constituted attorney in fact under and by virtue of a power of attorney dated December 14, 1915, and recorded in the United States Patent Office November 27, 1916, in Liber K 101, page 176 of Transfers of Patents, this 27th day of March, 1917.

MINERALS SEPARATION LIMITED,

By JOHN BALLOT (L. S.)

In presence of: Attorney in fact.

S. Gregory

Henry D. Williams.

STATE OF NEW YORK,
COUNTY OF NEW YORK.—ss:

On this 27th day of March, 1917, before me personally came JOHN BALLOT, attorney in fact of Minerals Separation Limited, a Company organized under the laws of Great Britain, to me personally known, and known to me to be the individual described in and who, as such attorney, executed the within petition and acknowledge that he executed the same as the act and deed of Minerals Separation, Limited, therein described, by virtue of a power of attorney duly executed by said Minerals Separation, Limited, bearing date December 14, 1915, which power of attorney was exhibited to me, and he stated that it was still in force and effect.

(Seal) HARRY C. LEWIS,
Notary Public, Bronx Co. No. 12. Certificate filed in New York County No. 41.

EXHIBIT "E"

At a stated Term of the United States District Court, in and for the District of Montana, held at the Court Rooms in the Federal Court Building in the City of Butte in said District this 18th day of April, 1917.

Present:

HON. GEORGE M. BOURQUIN,

District Judge.

MINERALS SEPARATION, LIMITED, and MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED,

Complainants.

vs.

JAMES M. HYDE,

Defendant.

In Equity

This case having come on for final hearing on pleadings and proofs and having been argued by Henry D. Williams, Esq., in behalf of plaintiffs, and Walter A.

Scott and Thomas F. Sheridan, Esqs., in behalf of defendant, and due consideration having been had, and plaintiff Minerals Separation, Limited, having filed a disclaimer of a part of the thing claimed in claims 9, 10 and 11 of the Letters Patent in suit, and having withdrawn said claims 9, 10 and 11 from this suit, and having waived an accounting of profits and damages, it is

ORDERED, ADJUDGED AND DECREED that the Letters Patent of the United States issued to Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, on November 6, 1906, No. 835,120 for improvements in Ore Concentration, are good and valid in law as to claims 1, 2, 3, 5, 6, 7, and 12.

That the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot were the true, original, first and joint inventors of the invention described in the said Letters Patent and in the specification annexed thereto and particularly pointed out in claims 1, 2, 3, 5, 6, 7 and 12.

That Minerals Separation, Limited, one of the complainants herein, is the lawful, sole and exclusive owner of said Letters Patent, and that Minerals Separation American Syndicate, Limited, the other complainant, is the exclusive licensee under an agreement whereby both of the complainants must participate in the granting of licenses to use the said invention.

That James M. Hyde, the defendant herein, has infringed upon said Letters Patent, particularly as to claims 1, 2, 3, 5, 6, 7 and 12, and upon the exclusive rights of the complainants herein under the same by

carrying on the process of ore concentration set forth and claimed in said Letters Patent as aforesaid.

That a perpetual injunction issue out of and under the seal of this court directed to the said defendant, James M. Hyde, enjoining and restraining him, his confederates, associates, servants, agents, attorneys, clerks and workmen and every person acting for or in his behalf, from any installation or use in any manner of the said patented invention or any part thereof in violation of the rights of the complainants as aforesaid, and from encouraging and inducing others to infringe the said Letters Patent and from defending other infringers of said Letters Patent or reimbursing them for the expense of defending against said Letters Patent, in whole or in part, or otherwise aiding or abetting others to install or use processes of ore concentration in infringement of said Letters Patent.

April 18, 1917.

BOURQUIN, J.

FILED: May 1, 1917,

GEO. W. SPROULE, Clerk,
By H. H. WALKER, Deputy.

And thereafter, on May 4th, 1917, the defendant's answer to plaintiffs' supplemental bill of complaint was filed, being as follows, to-wit:

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

IN EQUITY

No. 8

ANSWER TO SUPPLEMENTAL BILL OF COMPLAINT.

Comes now the above named defendant, and for answer to the supplemental bill of complaint, herein on file, admits, denies and alleges.

I.

Admits, that heretofore, to-wit: On or about the

10th day of October, 1913, the plaintiff, Minerals Separation, Limited, filed its bill of complaint in the above styled Court, alleging the issue and ownership of Letters Patent 835,120; and alleging infringement by the above named defendant; and alleging that there was a suit of the said plaintiff and another against James M. Hyde; and alleging in said bill of complaint that the said defendant participated therein; and alleging that by certain alleged conduct the defendant became estopped; and praying for an injunction and accounting of profits and damages. Admits that defendant filed an Answer, an Amended Answer and a Supplemental Answer thereto.

II.

Answering the allegations contained in paragraph 2 of said Supplemental Bill of Complaint, defendant admits that the plaintiffs, Minerals Separation American Syndicate Limited and Minerals Separation North American Corporation, are corporations organized as alleged in said Supplemental Bill of Complaint.

III.

Answering the allegations contained in paragraph 3 of said supplemental Bill of Complaint, this answering defendant denies that it has any knowledge or information of the allegations therein contained sufficient to form a belief, and, therefore, the defendant requires proof of same; except that defendant specifically denies that there are any claims or demands or rights of action for profits and damages or for infringements of said Letters Patent, 835,120, by reason of the invalidity of said patent 835,120.

IV.

Answering the allegations contained in paragraph 4 of said Supplemental Bill of Complaint, this defendant admits the allegations therein contained; but in this connection, avers that the said finding and decision of said Supreme Court was directed to the said James M. Hyde, and was in no wise directed to this defendant, and in no wise affected this defendant, and that the legal rights of this defendant were not affected thereby.

V.

Answering the allegations contained in paragraph 5 of said Supplemental Bill of Complaint, defendant denies that on the 28th day of March, 1917, or at any other time, Minerals Separation, Limited, as the sole assignee of the patentee of said Letters Patent 835,120, for the whole of the United States or the territories and possessions thereof, or at all, in view of the aforesaid decision or mandate of the Supreme Court of the United States, or at all, or under or pursuant to the laws for such cases made and provided, or without unreasonable neglect or delay, entered its or any disclaimer of so much of the thing patented by claims 9, 10 or 11 of said Letters Patent 835,120 as it did not choose to hold or claim by virtue of said Letters Patent. Denies that said Minerals Separation, Limited, filed a legal disclaimer, or a disclaimer which relinquishes or disclaims any part of said patent, or which disclaims or relinquishes claims 9, 10 or 11 of said patent. Admits that said plaintiff, Minerals Separation, Limited, filed in the Patent Office of the United States of America,

that certain paper attached to plaintiff's Supplemental Bill of Complaint, marked "Exhibit D"; but denies that said paper is a disclaimer in law or in fact, or a disclaimer within the meaning of the laws of the United States.

VI.

Answering the allegations contained in paragraph 6 of said Supplemental Bill of Complaint, defendant admits that on the 16th day of April, 1917, the final decree was entered in said suit of Mineral Separation, Limited, and another against James M. Hyde, decreeing the validity of claims 1, 2, 3, 5, 6, 7, and 12 of said Letters Patent 835,120, and infringement thereof by the defendant in that case, James M. Hyde, and a perpetual injunction against the said defendant, James M. Hyde. Admits that the "Exhibit E", attached to said Supplemental Bill of Complaint is a copy of said decree. Admits that plaintiffs in that suit waived accounting against the said James M. Hyde; but deny that the said plaintiffs in that suit, or any plaintiff in this suit, filed proof of a disclaimer. Admits that the said plaintiffs in that suit did not ask for costs against the said James M. Hyde.

VII.

Answering the allegations contained in paragraph 7 of said Supplemental Bill of Complaint, defendant denies that the processes recited in claims 9, 10 or 11 of said Letters Patent 835,120, as limited by the alleged disclaimer, or as attempted to be limited [illegible]

P. CXXIV. L. 30. Before the period insert " or that either or any of them was a new or original invention of the patentee thereof."

nies that said claims 9, 10 or 11 of said Letters Patent 835,120, as limited by said alleged disclaimer, or as attempted to be limited by said alleged disclaimer, are good or valid. Denies that this defendant, subsequent to the issue of said Letters Patent 835,120, or prior to the filing of the Bill of Complaint herein, or at any other time, or at all, or without the license and allowance of the plaintiffs, or either or any of them, employed processes of concentrating powdered ores embodying or containing said alleged invention or inventions in infringement of said claims 9, 10 or 11 of said Letters Patent 835,120, as limited by said alleged disclaimer, or as attempted to be limited by said alleged disclaimer, or has employed processes of concentrating powdered ores embodying and containing the alleged invention or inventions of claims 1, 2, 3, 5, 6, 7 and 12, or any or either of them or at all of said Letters Patent, or continued or continues to do so, or has encouraged or has induced others to infringe or, otherwise, or at all. Denies each and every allegation in paragraph 7 of said Supplemental Bill of Complaint not hereinbefore specifically admitted or denied.

VIII.

This defendant states that paragraph 8 of said tendered Supplemental and Amended Bill of Complaint has, by notice of counsel, been embodied in the record as an amendment to the Bill of Complaint therein on file and denials of the allegations in said paragraph 8 are contained in the answer of defendant to the said complaint as amended, this day filed. This defendant denies each and every allegation contained in paragraph 8 of plain-

tiffs' Supplemental Bill of Complaint, except as admitted in said answer to the complaint as amended, to which reference is hereby made.

IX.

Answering the allegations contained in paragraph 9 of said Supplemental Bill of Complaint, defendant denies that the final decree entered on April 16th, 1917, in said suit of Minerals Separation, Limited, against James M. Hyde, is final or determinative against this defendant as to the issue of validity of claims 1, 2, 3, 5, 6, 7 and 12 of said Letters Patent 835,120, or as to any of said claims; or is final or determinative against this defendant at all. Denies that said final decree is final or determinative as to this defendant as to the issue of infringement of said claims by the acts or operations there complained of, or of any act or operation there complained of, or of any act or operation at all.

X.

Denies each and every allegation contained in said Supplemental Bill of Complaint not hereinbefore specifically admitted or denied.

Further answering said Supplemental Bill of Complaint, defendant alleges:

That after the determination of the case of Minerals Separation, Limited, and another, v. James M. Hyde, in the above styled court, the said case was considered by the Circuit Court of Appeals for the Ninth Circuit, on appeal from the above styled court, and that the said Circuit Court of Appeals in May, 1914, reversed

and set aside the decree of the above styled court in favor of the Minerals Separation, Limited, and another, and against James M. Hyde, and did declare the said patent No. 835,120 and all of the claims thereof invalid and of no force or effect; that thereafter the said case of Minerals Separation, Limited, and another vs. James M. Hyde reached the Supreme Court of the United States through a writ of certiorari and was thereafter argued before the said Supreme Court of the United States and a decision therein rendered by the Supreme Court of the United States, by which decision the decision and judgment of the Circuit Court of Appeals for the Ninth Circuit was reversed and set aside except that said Supreme Court of the United States did declare claims 9, 10 and 11 of said patent No. 835,-120 invalid and of no force or effect, and that said decision so declaring said claims invalid was rendered on the 11th day of December, 1916, and that said plaintiffs were, and each of them was, then and there on said date duly advised of the decision and order of the said Supreme Court of the United States upon the patent aforesaid and did know that the said Supreme Court of the United States had declared each and all of said claims 9, 10 and 11 invalid and that said plaintiffs have, and each of them has, wholly failed and unreasonably neglected and delayed the filing of a proper or any disclaimer in writing of the matters set forth in claims 9, 10 and 11 in the patent office of the United States of America except in this, that Minerals Separation, Limited, on March 28th, 1917, did file a paper purporting to be a disclaimer of 9, 10 and 11, which said paper was wholly and totally inadequate and was not in fact

or in law a disclaimer of said claims 9, 10 or 11 in accordance with the decision and ruling of the Supreme Court of the United States; that said disclaimer was wholly insufficient in law or in fact to constitute a disclaimer at all; that said disclaimer was not filed until after a supplemental answer was filed in this case by the above named defendant setting up as a defense that the said then plaintiff in this case had wholly failed to file a disclaimer as shown by the pleadings and files in this case. Defendant attaches hereto a copy of said alleged disclaimer marked Exhibit "A". That the said Minerals Separation, Limited, one of the plaintiffs above named, was guilty of unreasonable neglect and delay in filing the said disclaimer and the said other plaintiffs herein have been guilty of unreasonable delay and neglect herein in filing the said disclaimer in writing; that by reason of the unreasonable neglect and delay of the said plaintiffs, and each of them, to disclaim in writing each and all claims to claims 9, 10 and 11, the whole of said patent No. 835,120 has become wholly void and invalid and of no force or effect, and that the plaintiffs cannot, nor can any of them, rely thereon, nor maintain action in equity under said patent and that the plaintiffs are, and each of them is, now barred by reason of the said unreasonable delay and neglect and failure of each of them from any relief of any kind or nature in equity, nor can plaintiffs, or either of them now be given any assistance in a court of equity for any alleged invasion of alleged rights under said patent, nor can plaintiffs, or either of them, maintain an action for injunction or accounting, and that plaintiffs are, and each of them is, estopped from

any further proceedings herein by reason of the unreasonable neglect or delay to file a proper or any disclaimer to claims held invalid by the Supreme Court of the United States as aforesaid and in accordance with the statutes of the United States of America in such cases made and provided; that the said defendant further alleges that the said plaintiffs have and each of them has wholly failed up to this time to file a proper disclaimer in the Patent Office of the United States as required by law.

By way of further defense herein defendant alleges that the said plaintiffs are, and each of them is, estopped from asserting or claiming that its said alleged patent, or any claim thereof is infringed by the use of an amount of oil exceeding five-tenths of one per cent on the weight of the ore treated at a given time, for the reason that the plaintiffs, Minerals Separation, Limited, and Minerals Separation American Syndicate, Limited, in a judicial proceeding, stated that the invention herein referred to was not practised by the use of an amount of oil in excess of five-tenths of one per cent on the weight of the ore treated and by the further statements in a judicial proceeding that the invention was not reached until the amount of oil reached and fell below five-tenths of one per cent on the ore treated and that each of said statements was made in a judicial proceeding in a court having jurisdiction of the subject matter; that the plaintiff, Minerals Separation North American Corporation, claims to be the successor in interest of the other plaintiffs herein; that by reason of said statements the said plaintiffs are, and each of them is, now precluded and estopped from as-

serting in this court of equity that the invention embraces more than that described and claimed by it as aforesaid. Defendant alleges that said acts immediately last complained of did not occur until after the original joining of issue herein and the defendant did not become acquainted with the said facts until November, 1916.

W H E R E F O R E, defendant having fully answered plaintiffs' Supplemental Bill of Complaint, prays to be dismissed hence with its costs.

THOMAS F. SHERIDAN
W. A. SCOTT
J. BRUCE KREMER
T. H. SHERIDAN
L. P. SANDERS
ALF. C. KREMER
Solicitors for Defendant.

UNITED STATES OF AMERICA,
DISTRICT OF MONTANA,
COUNTY OF SILVER BOW,—ss:

J. L. BRUCE, being first duly sworn, on oath deposes and says:

That he is an officer, to-wit: the Manager and also the agent of the above-named defendant, and makes this verification in said capacity for and on behalf of the above named defendant; that he has read the foregoing answer to plaintiffs' supplemental complaint, knows the contents thereof, and that the matters and things therein stated are true to the best of his knowledge, information and belief.

J. L. BRUCE

Subscribed and sworn to before me this 4th day of May, 1917.

C. H. TUOHY
Notary Public for the State of Montana, Residing at Butte, Montana.

My commission expires July 7th, 1918.

(Notarial Seal)

EXHIBIT A.

UNITED STATES PATENT OFFICE.

Hon. Commissioner of Patents,

Sir:

Your Petitioner, Minerals Separation, Limited, a corporation organized and existing under the laws of Great Britain and having its principal place of business in London, England, hereby represents as follows:

1. That on November 6th, 1906, Letters Patent of the United States for Ore Concentration, No. 835,120, were granted to Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, of London, England, and your Petitioner is now the sole and exclusive owner of the said Letters Patent.

2. That by the decision of the Supreme Court of the United States in Minerals Separation, Limited, and Minerals Separation American Syndicate, Limited, vs. James M. Hyde, filed the 11th day of December, 1916, your Petitioner is advised that the said Letters Patent No. 835,120, in so far as concerns claims 9, 10 and 11 thereof, covers and includes more than the said inventors had a right to claim as new.

3. That the matter which the said patentee and your Petitioner are, in accordance with the said decision of the said Court, not entitled to hold or claim by virtue of said claims 9, 10 and 11 of said Letters Patent No. 835,120, was included therein by mistake, and without

fraudulent or deceptive intent, and without any wilful default or intent to defraud or mislead the public.

4. That the subject-matter not herein and hereby disclaimed is definitely distinguishable from the part or parts disclaimed herein, and is truly and justly the invention of the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, and is a material and substantial part of the thing patented.

Your Petitioner, therefore, for the purpose of complying with the requirements of the law in such case made and provided, and of disclaiming those parts of the thing patented which your Petitioner does not choose to claim or hold by virtue of said Letters Patent No. 835,120 does hereby disclaim from claims 9, 10 and 11 of said Letters Patent No. 835,120, any process of concentrating powdered ores excepting where the results obtained are the results obtained by the use of oil in a quantity amounting to a fraction of one per cent on the ore.

IN WITNESS WHEREOF your Petitioner has caused these presents to be signed and sealed by John Ballot, its duly constituted attorney in fact under and by virtue of a power of attorney dated December 14, 1915, and recorded in the United States Patent Office November 27, 1916, in Liber K 101, page 176 of Transfers of Patents, this 27th day of March, 1917.

MINERALS SEPARATION LIMITED
By JOHN BALLOT (L. S.)
Attorney in fact

In presence of:
S. Gregory
Henry D. Williams

STATE OF NEW YORK
COUNTY OF NEW YORK.—ss:

On this 27th day of March, 1917, before me personally came JOHN BALLOT, attorney in fact of Minerals Separation Limited, a Company organized under the laws of Great Britain, to me personally known, and known to me to be the individual described in and who, as such attorney, executed the within petition and acknowledged that he executed the same as the act and deed of Minerals Separation, Limited, therein described, by virtue of a power of attorney duly executed by said Minerals Separation, Limited, bearing date December 14, 1915, which power of attorney was exhibited to me, and he stated that it was still in force and effect.

HARRY C. LEWIS

Notary Public, Bronx Co. No. 12 Certificate Filed in New York County No. 48.

(Seal)

FILED:
May 4, 1917.

GEO. W. SPROULE, Clerk.
By H. H. WALKER, Deputy.

Service of the foregoing answer to supplemental bill of complaint accepted, and copies thereof received this 4th day of May, 1917.

O. W. MCCONNELL,
HENRY D. WILLIAMS,
WM. HOUSTON KENYON,
Solicitor for Plaintiffs and of Counsel.

And thereafter on May 4th, 1917, defendant's answer to plaintiffs' bill of complaint as amended was filed, being as follows, to-wit:

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly BUTTE AND SUPERIOR COPPER COMPANY, LIMITED,

Defendant.

In Equity.

ANSWER TO PLAINTIFFS' BILL OF COMPLAINT AS AMENDED.

The answer of Butte and Superior Mining Company, defendant, formerly Butte and Superior Copper Com-

pany, Limited, to the bill of complaint of plaintiffs as amended.

The defendant now and at all times saving and reserving unto itself all and all manner of benefit and advantage of exception which can or may be had or taken to the errors, uncertainties or other imperfections contained in the bill of complaint as amended herein, for answer hereto, or to so much or such parts thereof as it is advised it is material to make answer unto, says as follows:

I.

Admits that the plaintiffs, Minerals Separation, Limited, and Minerals Separation American Syndicate Limited, are corporations organized and existing under and by virtue of the laws of Great Britain; admits that the plaintiff, Minerals Separation North American Corporation is a corporation organized under the laws of the State of Maryland. Admits that the defendant is a corporation duly organized and existing under the laws of the State of Arizona and has a regular established place of business in the City of Butte, County of Silver Bow, State of Montana. Denies that it has committed acts, or any act, of infringement at said place, or at any other place, or at any time, or at all, as alleged in plaintiffs' bill of complaint as amended, or otherwise.

II.

Admits that this suit is brought under the patent laws of the United States for the alleged infringement of the United States Letters Patent No. 835,120,

issued November 6th, 1906, for alleged improvements in ore concentration; but denies that there has been any infringement thereof by this defendant.

III.

Denies that on the 29th day of May, 1905, or at any other time, Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard, and John Ballot were, within the meaning of the statutes of the United States then in force, the original or first or joint inventors, or that either of them was, or that any of them were, the original or joint inventors of a certain new or useful process of ore concentration, or were entitled to a patent thereon under the provisions of said statutes, or that they duly filed in the United States Patent Office an application for Letters Patent of said alleged invention; denies that on the 6th day of November, 1906, all of the requirements of the statutes having been duly complied with, the said Letters Patent of the United States No. 835,120 were duly issued on said application to the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, or either, or any of them; admits that a certain alleged patent being No. 835,120, was issued to Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot.

Denies each and every allegation contained in paragraph 3 of plaintiffs' bill of complaint as amended not hereinbefore specifically admitted or denied.

IV.

Denies that it has any knowledge or information as to whether on or about the 7th day of December, 1909,

the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot duly or at all assigned to the plaintiffs, or any other person or corporation, all right, title and interest in and to said alleged invention and alleged Letters Patent, or that plaintiffs are now the sole owners of said alleged invention or Letters Patent, or of all rights of action, or claim, or demand for alleged infringement thereof since said alleged assignment.

V.

Defendant denies that said alleged invention is of great value or utility; denies that there was or is any invention in the said alleged patent No. 835,120; denies that it has any knowledge or information as to whether the plaintiffs have, or any, or either of them has been to great trouble or expense in demonstrating the alleged utility thereof, or in introducing the same into extensive commercial use in the United States, or elsewhere; denies that it has any knowledge or information as to whether the plaintiffs have, or any, or either of them has granted numerous licenses for carrying on said alleged process of ore concentration in the United States or elsewhere; denies that said alleged process has been or is now being extensively carried on in the United States, or elsewhere; denies that plaintiffs have, or any, or either of them has any patent upon any alleged process, and denies that plaintiffs have, or any, or either of them has, the right to grant licenses for the use of said alleged process conditioned on the payment of royalty measured by the output of

said alleged process of ore concentration, or otherwise, or at all.

Denies each and every allegation contained in paragraph 5 of plaintiffs' bill of complaint as amended not hereinbefore specifically admitted or denied.

VI.

Answering the allegations contained in paragraph 6 of plaintiffs' bill of complaint as amended, this defendant denies that it has infringed or is infringing the said alleged Letters Patent since the plaintiffs, or any, or either of them, acquired the same, or at any other time, or at all, by installing apparatus for or carrying on the use of said alleged process of ore concentration, or in any other manner, or at all, at the town of Basin, in the County of Jefferson, State of Montana, or at the City of Butte, Silver Bow County, State of Montana, or at any other place, or at all, without the consent or allowance of the plaintiffs, or any, or either of them, or at all; denies that said alleged process of ore concentration alleged to have been carried on by this defendant embodied the said alleged invention as claimed in claims one (1), or two (2), or three (3), or five (5), or six (6), or seven (7), or nine (9), or ten (10), or eleven (11), or twelve (12), or any other claim of said alleged Letters Patent; denies that the defendant is carrying on any alleged infringement at the last named place, or at any other place, or at all, as a continuing or any act or threatens to continue to use said process, or to infringe or threatens to infringe at all; denies that defendant has ever infringed said alleged patent.

VII.

Answering the allegations contained in paragraph 7 of plaintiffs' bill of complaint as amended, defendant admits that the plaintiff, Minerals Separation, Limited, and another, on or about the 9th day of October, 1911, brought suit in this court against James M. Hyde for alleged infringement of Letters Patent No. 835,120, but denies that said suit was fully contested on its merits, but admits that said suit was presented at length to this court on briefs and arguments of counsel, and that this court, in an opinion filed July 26th, 1913, the court having jurisdiction of the persons and subject matter in said suit, directed that an interlocutory decree be entered adjudging the validity of said Letters Patent as against James M. Hyde, and infringement thereof by said James M. Hyde as to the particular claims charged to be the subject matter of the alleged infringement by the defendant herein; but denies that there was an adjudication of the validity of said Letters Patent as against this defendant, or any of claims of said Patent as against this defendant, or that this defendant was in any manner affected by or was in any manner a party to the said alleged suit above referred to; admits that the above styled court directed the issuance of an injunction restraining from alleged further infringement by the said James M. Hyde and a reference to a master for ascertaining profits and damages to be awarded against the said James M. Hyde, and admits that on the 15th day of August, 1913, a decree was entered as directed by the said court, and that thereafter a permanent injunction

restraining the said James M. Hyde from further alleged infringement of said Letters Patent No. 835,120 was issued by the above court. Further answering this defendant alleges that thereafter said cause was duly and regularly appealed to the Circuit Court of Appeals and was thereafter presented before the Supreme Court of the United States, it having reached the said court on writ of certiorari as more fully and particularly appears from the pleadings and records herein on file. Further answering the allegations contained in paragraph 7, this defendant denies each and every allegation contained therein not hereinbefore specifically admitted or denied.

VIII.

Answering the allegations contained in paragraph 8 of plaintiffs' bill of complaint as amended, this defendant denies that at the time referred to in said paragraph 8, or any other time, or at all, the defendant, Butte and Superior Mining Company, invited said James M. Hyde to test the applicability of flotation to the ores of the Butte and Superior Mining Company; denies that thereafter, Butte and Superior Mining Company investigated through its own attorney or counsel the matter of infringement of alleged Letters Patent of Minerals Separation, Limited, by such application, or at all, save and except insofar as an investigation was made necessary through proceedings taken against said Butte and Superior Mining Company, or threats of proceedings against said Butte and Superior Mining Company, of which threats this pending suit

is the outcome; admits that the said defendant entered into an agreement with the said James M. Hyde whereby Hyde, as an independent engineering contractor, was to do certain work in connection with the application of flotation to the ores of Butte and Superior Mining Company, and was to superintend under said independent contract the erection and operation of a plant as provided in the contract made and entered into with the said James M. Hyde by the said Butte and Superior Copper Company, Limited, now Butte and Superior Mining Company, but not otherwise. This defendant annexes hereto and makes a part hereof a copy, of said contract made and entered into between the said James M. Hyde and Butte and Superior Copper Company, Limited, the same being marked Exhibit "A"; admits that by the terms of said contract the said James M. Hyde was to be paid such expenses as are provided in said contract and not otherwise, and was to have additional payment as provided for in said contract and not otherwise; denies that it was further agreed between the said Butte and Superior Copper Company, Limited, and said James M. Hyde that said Butte and Superior Copper Company, Limited, would defend said Hyde or hold him harmless in case he should be sued by Minerals Separation, Limited, or any other person or corporation, or at all, for infringement by reason of the erection and operation of said plant for said Butte and Superior Mining Company, or otherwise; denies that the acts, or any act, of said Hyde complained of in said suit of Minerals Separation, Limited,

and another against James M. Hyde, or any other suit, as the acts of infringement, there or at all consisted in the operation of the plant, or any plant, erected or operated by said Hyde for the Butte and Superior Mining Company, but in this connection this defendant avers that said plant was erected by the said Hyde as an independent contractor and not as an employee of the Butte and Superior Mining Company and was erected as set forth in said agreement, and this defendant admits that it was in said plant referred to in said agreement that the said Hyde committed the acts which plaintiffs claim were acts of infringement, but defendant avers that it had no control over the acts of said James M. Hyde, he acting under the provisions of said independent contract hereto annexed. This defendant denies that it directed the said operation; denies that said alleged acts of infringement by the said Hyde were conducted in the mill of the said Butte and Superior Mining Company with apparatus or ingredients belonging to said Company, except as herein stated, to-wit: under the independent contract existing between the said Hyde and the said Company; admits that said alleged operations were conducted upon the ore of said Company, but denies that the same were for the benefit or advantage of said Company, save and except as set forth in said contract, a copy of which hereto annexed and marked Exhibit "A"; denies that said alleged acts of infringement by the said Hyde were conducted by the employes of Butte and Superior Mining Company under the superintendence of the

said Hyde, but in this connection avers that the said Hyde conducted the alleged acts herein referred to, save and except where manual labor was concerned and that in this connection defendant admits that men engaged in and about the plant of said Butte and Superior Mining Company by said Company performed manual labor in and about said plant; denies that in those operations, or in any operation, or at all, the said Hyde was an employe of the said Company; denies specifically that the said Hyde was ever an employee of the said Company; denies specifically that said Butte and Superior Mining Company conducted or controlled the defense from the beginning to the end of said suit of Minerals Separation, Limited, and another v. James M. Hyde; denies specifically that the said Butte and Superior Mining Company at any time, or at all, conducted or controlled the defense of the said suit of Minerals Separation, Limited, and another v. James M. Hyde; denies specifically that said Butte and Superior Mining Company at any time had conduct or control of the defense of said suit, or that the Butte and Superior Mining Company at any time ever had any authority to direct the said litigation or to withdraw the defense of the same or to dispose of the same by settlement, or otherwise, or at all, or ever had any conduct or control of said litigation; denies that the said Butte and Superior Mining Company paid all the expenses of said suit or paid the said James M. Hyde for his expenses in assisting in the defense of said suit, except as follows, to-wit: that the said Butte and Superior Mining Com-

pany purchased of and from the said James M. Hyde the exclusive rights and privileges in the County of Silver Bow, State of Montana, for the treatment of ores produced therein by all processes or patents which the said James M. Hyde might have or procure in connection with the flotation or treatment of ores or metals, and that the said Company agreed to pay for said exclusive license aforesaid all the expenses of the said suit of Minerals Separation, Limited, v. James M. Hyde for the said Hyde. This defendant avers that the said expenses of said litigation were paid for the said Hyde as a consideration as aforesaid and not otherwise; admits that the said James M. Hyde applied for and obtained a patent No. 1,022,085 for the concentration of ores in the re-treatment of concentrates and other features involved in the operation of the mill of Butte and Superior Mining Company, and involved in the operations of any and every other mill using any character of flotation process; denies that said patent was embraced in the said alleged charge of act of infringement against the said Hyde; denies that said patent was granted or issued for what was not the invention of said Hyde or any invention over the art, and denies specifically that said application for said patent was an afterthought, or a sham, or device to aid in the defense of said suit, but avers that said patent is a valuable patent recognized and existing and rendering efficient and great benefit to the art of flotation; denies that long subsequently, or after the suit was argued at final hearing in this court the said Hyde granted to Butte and Superior

Mining Company an exclusive license under said patent for the County of Silver Bow, State of Montana, but admits that said Hyde did grant an exclusive license under said patent to the Butte and Superior Mining Company for the County of Silver Bow, State of Montana, and for all ore produced therein, said Hyde having agreed to grant said exclusive license aforesaid long prior to the application for patent No. 1,022,085 for the consideration as herein alleged to have been paid by the Butte and Superior Mining Company to the said Hyde, and not otherwise; denies that said license was granted for and in consideration of said Company paying all, or any, of the expenses of the defense of said suit of Minerals Separation, Limited, v. James M. Hyde except as herein set forth or holding said Hyde harmless therein; denies that said Company ever agreed to hold said Hyde harmless therein; denies that said Company ever made any agreement for the defense of said suit save and except as herein set forth, to-wit: that said Company paid to the said James M. Hyde as a consideration for the license aforesaid an amount sufficient to pay the costs of the defense of said suit; denies that said license was without value or that said consideration was paid for nothing, or that the transaction was an afterthought, or a sham, or a device to avoid the legal or any effect of the actual or any relationship of Butte and Superior Mining Company to the defense of said suit; denies that said Butte and Superior Mining Company had any actual relationship to the defense of said suit; denies that the Butte and Superior

Mining Company had anything whatsoever to do with the defense of said suit as herein set forth; denies specifically that the Butte and Superior Mining Company ever had the direction of the defense of said suit or the control of said suit, or the control or direction of said litigation at any time, or at all, or could have withdrawn the said defense, or could have settled the said action, or could have disposed of the same, or any part thereof, in any manner, or at all; denies that the process introduced by the said Hyde into the Butte and Superior Mining Company's plant was continued in use by the said Company, except in part by or through other employees or other superintendence or in other plants. In this connection this defendant avers that the said process was from time to time modified and changed; denies that to the extent that the said Hyde was concerned in the operations decreed in said Hyde suit to be an infringer of said Letters Patent No. 835,120, or to any extent, or at all, this defendant was the master, or the principal, or was the joint tort feasor with the said Hyde: denies specifically that this defendant was at any time, or at all, the master, of the said Hyde, or the principal of the said Hyde, or was a joint tort feasor with the said Hyde; denies specifically that this defendant conducted the defense of the said Hyde in said suit against the said Hyde for its own protection or with the knowledge of the plaintiffs, or has had its day in court; denies that the said defendant conducted the defense of the said Hyde in said suit at all; denies that the said plaintiffs, or any, or either of them, ever at any

time had any knowledge whatsoever that the said defendant conducted said suit; denies that there was any knowledge of said fact to be had by any person, or at all; denies specifically the said allegation that the said defendant conducted the said suit and denies specifically the allegation that the said plaintiffs had any knowledge of the existence of a fact which did not exist; denies specifically that said defendant has had its day in court insofar as concerns the issues there raised or determined; denies that this defendant is bound by the said final decree, or any decree, against the said James M. Hyde in said case on April 16th, 1917, or any decree to the extent that the said Letters Patent in suit No. 835,120, are valid as against claims numbers one, two, three, five, six, seven or twelve, or any other claims, or at all, and specifically denies that this defendant is bound by the said decree in the Hyde case in any manner, or at all, as to any claims, or at all, and specifically denies that the said defendant is bound by said decree to the extent that said decree provides that said claims aforesaid were infringed by the acts or operations there complained of, and specifically denies that this defendant is bound by any decree in said Hyde suit, or is bound at all by said decree in said Hyde suit.

Denies each and every allegation contained in paragraph eight of plaintiffs' bill of complaint as amended not hereinbefore specifically admitted or denied.

IX.

Answering the allegations contained in paragraph 9,

this defendant admits that prior to the commencement of said suit against James M. Hyde, the plaintiffs made claims to the defendant in this suit that they claimed certain rights under said Letters Patent No. 835,120, but this defendant denies that the plaintiffs or any of them in fact had any rights under said Letters Patent No. 835,120. This defendant admits that it was advised of the proceedings in the said suit of Minerals Separation, Limited, and another, against James M. Hyde; admits that the above styled court in said action issued a permanent injunction in pursuance of said decree against the said James M. Hyde; admits that the said injunction and decree was directed to the said James M. Hyde, his confederates and associates, but denies that this defendant was at any time or is now a confederate or associate with the said James M. Hyde, and denies that it was in anywise or at all, bound or affected by said decree or said injunction; admits that a copy of said decree was served upon this defendant; denies that this defendant has ever infringed the said Letters Patent or has continued to infringe the said Letters Patent in defiance of the decree of this court or of the injunction issued thereon, to its own profit or to the damage of the plaintiffs or any of them or has at any time, or at all, infringed the said Letters Patent; denies that there was ever a decree of this court or an injunction of this court issued which in any manner affected the above-named defendant in the use of a flotation process, or otherwise, or at all.

X.

Denies each and every allegation contained in plaintiffs' bill of complaint as amended hereinbefore specifically admitted or denied.

Further answering plaintiffs' bill of complaint as amended, defendant says:

I.

(a) That the supposed invention set forth in said Letters Patent No. 835,120 had been patented and had been described in printed publications prior to the supposed invention thereof by said Sulman, Kirkpatrick-Picard and Ballot, and had been patented and described in printed publications more than two years prior to their application for a patent therefor; that said supposed invention was patented and fully described in each of the following described patents and publications, each of which patents was granted and became a patent and each of which patents and publications was published as a principal publication more than two years prior to the application by said Sulman, Picard and Ballot for said patent No. 835,120;

British patent to William Hayes, No. 488, dated February 23, 1860, sealed August 17, 1860.

UNITED STATES PATENTS.

No.	Date of Patent	Patentee
348,157	Aug. 24, 1886	C. J. Everson
575,669	Jan. 19, 1897	G. Robson
469,599	Feb. 23, 1892	A. M. Rouse

PUBLICATIONS.

The Daily Herald Democrat, published at Leadville, Colorado, October 30, 1889.

The Engineering and Mining Journal, published at New York City, N. Y., November 15, 1890.

(b) That said supposed invention was patented and fully described in each of the patents and publications set forth in paragraph (a) hereof and in the following described patents and publications, each of which patents was granted and became a patent, and each of which patents and publications was published as a printed publication prior to the supposed invention thereof by said Sulman, Kirkpatrick-Picard and Ballot.

No.	Date of Patents	Patentee
736,381	Aug. 18, 1903	M. F. R. Glogner
745,960	Dec. 1, 1903	I. F. Good
763,259	June 21, 1904	A. E. Cattermole
763,260	June 21, 1904	A. E. Cattermole
763,749	June 26, 1904	G. A. Goyder and E. Laughton
768,035	Aug. 23, 1904	G. D. Delprat
777,273	Dec. 13, 1904	A. E. Cattermole
777,274	Dec. 13, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard
784,999	Mar. 14, 1905	G. A. Goyder and E. Laughton
776,145	Nov. 29, 1904	C. V. Potter
787,814	Apr. 18, 1905	J. D. Wolf
788,247	Apr. 25, 1905	H. L. Sulman, H. F. Kirkpatrick-Picard and A. E. Cattermole.

British patent to Henry Harris Lake, communicated by Alcide Froment, No. 12,778 of 1902, applied for June 4, 1902, complete specification left March 4, 1903, accepted June 4, 1903, sealed August 18, 1903.

Italian patent to Alcide Froment, Regro Genle Vole, 43, No. 63,723, Regro Attes. Vol. 156 No. 166, May 20, 1902.

PUBLICATIONS

The California Journal of Technology for November, 1903, published at Berkeley, California, by the students in the Applied Science Colleges in the University of California, which contains upon pages 34 to 41 an article by W. F. Copeland, Drury Butler and James H. Wise, entitled "Experiments on the Elmore Process of Oil Concentration."

(c) That said Sulman, Kirkpatrick-Picard and Ballot were not the original or first inventors or discoverers of any material or substantial part of the thing patented in and by said patent No. 835,120, but that said supposed invention and all material and substantial parts thereof had before their alleged invention thereof been invented by the several persons named and referred to in paragraphs (a) and (b) hereof, and by them patented and described as therein set forth, and by others who fully and clearly described every material and substantial part of said supposed invention in applications filed by them in the United States Patent Office for United States Patents and in Letters Patent granted by the United States, and that the following are the names of said parties, the dates of the patents granted them, and the date of filing of the

United States patent applications in those instances where the patents were granted subsequent to the date of alleged invention by Sulman, Kirkpatrick-Picard and Ballot:

UNITED STATES PATENTS.

No.	Date of Patent.	Patentee
228,004	May 25, 1880	J. Tunbridge
345,951	July 20, 1886	H. Bradford
373,113	Nov. 15, 1887	Henry J. Wagner
444,345	Jan. 6, 1891	E. R. Gabbett
466,753	Jan. 5, 1892	E. A. Hickley
469,599	Feb. 23, 1892	A. M. Rouse
471,174	Mar. 22, 1892	C. B. Hebron & C. J. Everson
474,829	May 17, 1892	C. B. Hebron
521,899	June 26, 1894	Joseph Wm. Sutton
653,340	July 10, 1900	F. E. Elmore
667,222	Feb. 5, 1901	John W. Ivery
676,679	June 18, 1901	F. E. Elmore
689,070	Dec. 17, 1901	A. S. Elmore
692,643	Feb. 4, 1902	A. S. Elmore
703,905	July 1, 1902	A. S. Elmore
729,805	June 2, 1903	J. & L. Stoveken
735,071	Aug. 4, 1903	G. D. Delprat
763,259	June 21, 1904	A. E. Cattermole
763,859	June 28, 1904	J. D. Darling
768,035	Aug. 23, 1904	G. D. Delprat
770,659	Sept. 20, 1904	J. B. Scammell
776,145	Nov. 29, 1904	C. V. Potter

No.	Date of Patent	Date of Application	Patentee
787,814	Apr. 18, 1905	May 22, 1903	J. D. Wolf of London, England
788,247	Apr. 25, 1905	Mar. 29, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard, all of London, England.
793,808	July 4, 1905	Oct. 5, 1903	H. L. Sulman and H. F. Kirkpatrick-Picard of London, England.
807,502	Dec. 19, 1905	May 27, 1904	A. Schwarz of New York, N. Y.
807,503	Dec. 19, 1905	May 27, 1904	A. Schwarz of New York, N. Y.
807,504	Dec. 19, 1905	Sept. 21, 1904	A. Schwarz of New York, N. Y.
807,505	Dec. 19, 1905	Oct. 14, 1904	A. Schwarz of New York, N. Y.
807,506	Dec. 19, 1905	Nov. 4, 1904	A. Schwarz of New York, N. Y.
809,959	Jan. 16, 1906	Dec. 14, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia, now of St. Louis, Mo.
838,626	Dec. 18, 1906	Dec. 17, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia, now of St. Louis, Mo.

(d) That said H. L. Sulman, H. F. Kirkpatrick-Picard and John Ballot unjustly obtained said patent No. 835,120 for that which was in fact invented by others who were using reasonable diligence in adapting and perfecting the same; that said other parties filed in the United States Patent Office applications

for patents fully describing the supposed invention set forth in said patent No. 835,120 and obtained patents therefor; the names of said other parties, the dates when they filed said patent applications, the numbers of the patents so granted and the dates when said patents were granted being as follows:

No.	Date of Patent.	Date of Application	Patentee.
787,814	Apr. 18, 1905	May 22, 1903	J. D. Wolf of London, England.
788,247	Apr. 25, 1905	Mar. 29, 1904	A. E. Cattermole, H. L. Sulman and H. F. Kirkpatrick-Picard, all of London, England.
793,808	July 4, 1905	Oct. 5, 1903	H. L. Sulman and H. F. Kirkpatrick-Picard, of London, England.
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809,959	Jan. 18, 1906	Dec. 14, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia; now of St. Louis, Mo.
838,626	Dec. 18, 1906	Dec. 17, 1903	Edmund B. Kirby, formerly of Rossland, British Columbia; now of St. Louis, Mo.

II.

Also prior to the supposed invention or discovery of the alleged process patented in said Letters Patent No. 835,120 by said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, each and every material and substantial part of said supposed invention or discovery so patented had been invented and used by and was known to the following named persons, and was fully described in applications for Letters Patent of the United States deposited and filed by said persons in the United States Patent Office prior to the supposed invention or discovery of said alleged process set forth in said Letters Patent No. 835,120 by said Sulman, Kirkpatrick-Picard and Ballot; that said applications were so deposited and filed in the United States Patent Office and that Letters Patent of the United States were granted upon said applications as set forth below:

Moritz F. R. Glogner, a resident of Freiburg, in the Kingdom of Prussia, German Empire, on January 27, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 736,381 were granted thereon upon Aug. 18, 1903.

Israel F. Good, a resident of Allentown, Pennsylvania, on October 1, 1902, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters Patent No. 745,960 were granted thereon upon December 1, 1903.

Guillaume D. Delprat, a resident of Broken Hill,

Australia, on January 2, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 768,035 were granted thereon upon August 23, 1904.

Cosmo Kendall, a resident of upper Norwood, Surrey, England, on July 21, 1903, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters Patent No. 771,975 were granted thereon upon September 27, 1904.

Charles V. Potter, a resident of Balaclava, Victoria, Australia, on January 14, 1902, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 776,145 were granted thereon upon November 29, 1904.

Arthur E. Cattermole, a resident of Highgate, London, England, on September 28, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 777,273 were granted thereon upon Dec. 13, 1904.

Arthur E. Cattermole, Henry Sulman and Hugh F. Kirkpatrick-Picard, all residents of London, England, on March 29, 1904, deposited and filed in the United States Patent Office their application for Letters Patent of the United States, and that Letters Patent No. 777,274 were granted thereon upon December 13, 1904.

Arthur E. Cattermole, Henry L. Sulman and Hugh

F. Kirkpatrick-Picard, all residents of London, England, on March 29, 1904, deposited and filed in the United States Patent Office, their application for Letters Patent of the United States, and that Letters Patent No. 788,247, were granted thereon upon April 25, 1905.

Henry L. Sulman and Hugh F. Kirkpatrick-Picard, residents of London, England, on October 5, 1903, deposited and filed in the United States Patent Office their application for Letters Patent of the United States, and that Letters Patent No. 793,808 were granted thereon upon July 4, 1905.

Alfred Schwarz, a resident of New York City, New York, on April 19, 1905, deposited and filed in the United States Patent Office, his application for Letters Patent of the United States, and that Letters Patent No. 807,501 were granted thereon upon December 19, 1905.

Alfred Schwarz, a resident of New York City, New York, on May 27, 1904, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 807,503 were granted thereon upon December 19, 1903.

Edmund B. Kirby, a resident of Rossland, Canada, on December 14, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 809,959 were granted thereon upon January 16, 1906.

Edmund B. Kirby, a resident of Rossland, Canada,

on December 17, 1903, deposited and filed in the United States Patent Office his application for Letters Patent of the United States, and that Letters Patent No. 838,626 were granted thereon upon December 18, 1906.

Also patented or described and contained in other Letters Patent, the dates, numbers and grantees of which this defendant is not now able to specify, but prays to be allowed hereafter to add by amendment of this answer or otherwise, if it shall become necessary.

Also illustrated and described in printed publications, the names and dates which defendant is not able to specify, but prays to be allowed hereafter to add to this answer by amendment or otherwise, if it shall become necessary.

III.

This defendant avers that for the purpose of deceiving the public the description and specification filed by the said patentees in the Patent Office was in some particulars made to contain more than the whole truth relative to their alleged invention or discovery and more than is necessary to produce the desired effect, and that in other particulars the said description and specification was made to contain less than the whole truth relative to their alleged invention or discovery.

IV.

This defendant says that the said patentees, Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, and said plaintiffs herein, Miner-

als Separation, Limited, have admitted that the alleged invention which said Letters Patent No. 835,120 purport to embrace, and each and every material and substantial part thereof, was old and known to others prior to their alleged invention and discovery thereof, and have stated that said alleged invention was the invention of others, and that said patentees made such admissions and statements in the following described Letters Patent, and in the applications therefor and proceedings in the United States Patent Office relating thereto, and also in other patents, documents and writings.

LETTERS PATENT OF THE UNITED STATES.

793,808 Sulman & Kirkpatrick-Picard, application filed October 5, 1903, patented July 4, 1905.

835,143 Henry L. Sulman, application filed October 20, 1905, patented November 6, 1900.

835,479 Sulman, Kirkpatrick-Picard & Ballot, application filed May 20, 1905, patented November 6, 1906.

879,985 Sulman, Kirkpatrick-Picard & Ballot, application filed February 20, 1905, patented February 25, 1908.

LETTERS PATENT OF GREAT BRITAIN.

17,109 August 6, 1903, Cattermole, Sulman & Kirkpatrick-Picard.

20,419 September 22, 1903, Sulman, and Kirkpatrick-Picard.

5,260 March 13, 1905, Sulman, Kirkpatrick-Picard & Ballot.

19,709 September 19, 1905, Sulman.
26,712 December 21, 1905, Sulman, Kirkpatrick-Picard & Ballot.
23,870 October 14, 1910, Minerals Separation, Limited, and Nutter.
23,949 October 15, 1910, Nutter, Hoover and Minerals Separation, Limited.

Further answering plaintiffs' complaint as amended this defendant alleges:

That after the determination of the case of Minerals Separation, Limited, and another, v. James M. Hyde, in the above styled court, the said case was considered by the Circuit Court of Appeals for the Ninth Circuit, on appeal from the above styled court, and that the said Circuit Court of Appeals in May, 1914, reversed and set aside the decree of the above styled court in favor of the Minerals Separation, Limited, and another, and against James M. Hyde, and did declare the said patent No. 835,120 and all of the claims thereof, invalid and of no force or effect; that thereafter the said case of Minerals Separation, Limited, and another, vs. James M. Hyde reached the Supreme Court of the United States through a writ of certiorari and was thereafter argued before the said Supreme Court of the United States and a decision therein rendered by the Supreme Court of the United States, by which decision the decision and judgment of the Circuit Court of Appeals for the Ninth Circuit was reversed and set aside except that the Supreme Court of the United States did declare claims nine, ten and eleven of said patent No. 835,120 invalid and of no

force or effect, and that said decision so declaring said claims invalid was rendered on the 11th day of December, 1916, and that said plaintiffs were, and each of them was, then and there on said date duly advised of the decision and order of the said Supreme Court of the United States upon the patent aforesaid and did know that the said Supreme Court of the United States had declared each and all of said claims nine, ten and eleven invalid and that said plaintiffs, have, and each of them has, wholly failed and unreasonably neglected and delayed the filing of a proper or any disclaimer in writing of the matters set forth in claims nine, ten and eleven in the patent office of the United States of America except in this, that Minerals Separation, Limited, on March 28th, 1917, did file a paper purporting to be a disclaimer of nine, ten and eleven, which said paper was wholly and totally inadequate and was not in fact or in law a disclaimer of said claims nine, ten and eleven in accordance with the decision and ruling of the Supreme Court of the United States; that said disclaimer was wholly insufficient in law or in fact to constitute a disclaimer at all; that said disclaimer was not filed until after a supplemental answer was filed in this case by the above named defendant setting up as a defense that the said then plaintiff in this case had wholly failed to file a disclaimer as shown by the pleadings and files in this case. Defendant attaches hereto a copy of said alleged disclaimer marked Exhibit "B". That the said Minerals Separation, Limited, one of the plaintiffs above-named, was guilty of

P. CLXII, L. 32, after " claimer " insert " and the said other plaintiffs herein have been guilty of unreasonable neglect and delay herein in filing the said disclaimer "

neglect and delay of the said plaintiffs, and each of them, to disclaim in writing each and all claims to claims nine, ten and eleven, the whole of said patent No. 835,120 has become wholly void and invalid and of no force or effect, and that the plaintiffs cannot, nor can any of them, rely thereon, nor maintain an action in equity under said patent and that the plaintiffs, are, and each of them is, now barred by reason of the said unreasonable delay and neglect and failure of each of them from any relief of any kind or nature in equity, nor can plaintiffs, or either of them now be given any assistance in a court of equity for any alleged invasion of alleged rights under said patent, nor can plaintiffs, or either of them, maintain an action for injunction or accounting, and that plaintiffs are, and each of them is, estopped from any further proceedings herein by reason of the unreasonable neglect or delay to file a proper, or any, disclaimer to claims held invalid by the Supreme Court of the United States as aforesaid and in accordance with the statutes of the United States of America in such cases made and provided; that the said defendant further alleges that the said plaintiffs have and each of them has wholly failed up to this time to file a proper disclaimer in the Patent Office of the United States as required by law.

By way of further defense herein defendant alleges that the said plaintiffs are, and each of them is, estopped from asserting or claiming that its said alleged patent, or any claim thereof is infringed by the use of an amount of oil exceeding five-tenths of one per cent. on the weight of the ore treated at a given time, for the reason that the plaintiffs, Minerals Separation,

Limited, and Minerals Separation American Syndicate, Limited, in a judicial proceeding, stated that the invention herein referred to was not practised by the use of an amount of oil in excess of five-tenths of one per cent. on the weight of the ore treated and by the further statements in a judicial proceeding that the invention was not reached until the amount of oil reached and fell below five-tenths of one per cent. on the ore treated; and that each of said statements was made in a judicial proceeding in a court having jurisdiction of the subject matter; that the plaintiff, Minerals Separation North American Corporation, claims to be the successor in interest of the other plaintiffs herein; that by reason of said statements the said plaintiffs are, and each of them is, now precluded and estopped from asserting in this court of equity that the invention embraces more than that described and claimed by them as aforesaid. Defendant alleges that said acts immediately last complained of did not occur until after the original joining of issue herein and the defendant did not become acquainted with the said facts until November, 1916.

WHEREFORE, defendant, having fully answered, prays to be dismissed hence with its costs.

(Signed) Thomas P. Sheridan,
W. A. Scott,
J. Bruce Kremer,
T. H. Sheridan,
L. P. Sanders,
Alf C. Kremer,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
District of Montana,
County of Silver Bow,—ss:

J. L. Bruce, being first duly sworn on oath, deposes and says:

That he is an officer, to-wit: the Manager and also the agent of the above-named defendant, and makes this verification in said capacity for and on behalf of the above-named defendant; that he has read the foregoing answer to plaintiffs' complaint as amended, knows the contents thereof, and that the matters and things therein stated are true to the best of his knowledge, information and belief.

(Signed) J. L. Bruce.

Subscribed and sworn to before me this 4th day of May, 1917.

(Notarial Seal).

C. K. Tuohy,
NOTARY PUBLIC for the State of Montana, residing at Butte, Montana. My commission expires July 7th, 1918.

EXHIBIT A.

THIS AGREEMENT, made and entered into this 22nd day of July, 1911, by and between the Butte & Superior Copper Company, Limited, a corporation created and operating under and by virtue of the laws of Arizona, and doing business in Montana, party of the first part, and J. M. Hyde, party of the second part:

WITNESSETH: Whereas, James M. Hyde claims that he has knowledge of a method of treating certain ores of the character of the ore produced in the BLACK ROCK MINE, the property of the Butte & Superior Copper Company, Limited, by means of a process known as "The Gas Bubble Flotation Process," and whereas the said Hyde represents that in his best judgment an increased saving in the milling of said ores being treated by the Butte & Superior Copper Company, Limited, at the mill operated by the said Butte and Superior Copper Company, Limited, at Basin, may be made by the use of said process, and,

WHEREAS, the Butte and Superior Copper Company, Limited, is desirous of testing the efficiency of the said process with a view of ascertaining whether or not the use of the said process will increase the saving of values at its said mill;

NOW THEREFORE, for and in consideration of the mutual promises and agreements of the parties hereto and the covenants and agreements hereinafter contained, the parties hereto do hereby agree as follows, to-wit:

The said Company agrees that it will furnish a sum

not to exceed Twenty-Five Hundred ($2500.00) Dollars to be used by the said Hyde in the equipment and installation of a fifty (50) ton experimental plant for the use of the said flotation process at Basin, Montana, the said plant to be erected under the supervision of the said Hyde, he to have full charge of the erection of said experimental plant provided, however, that in the construction and operation of the said experimental plant the running of the mill now operated by the Butte and Superior Copper Company, Limited, shall in nowise be interfered with.

The said Company further agrees that the said Hyde may engage his own assistants for the operation of the said experimental plant provided that the payroll of the men employed by the said Hyde in the operation of the said experimental plant shall not exceed Forty ($40.00) Dollars per day, and the said Company agrees that it will pay the said payroll provided the sum does not exceed Forty ($40.00) Dollars per day. It is expressly agreed and understood that the said Hyde shall receive no sum whatsoever as compensation either for the construction or operation of the said experimental plant save and except his personal expenses while engaged in mill work in the said Company's behalf, said sum not to exceed Five ($5.00) Dollars per day.

It is further agreed and understood by the said Hyde that said experimental plant shall be operated for a period of thirty (30) days after its completion, the said process above referred to to be used exclusively in the operation of said experimental plant and that if in the judgment of the General Manager or Super-

intendent of the Butte and Superior Copper Company, Limited, the plant has not shown that the process used can increase the profits of said Company by at least twenty-five (25c) cents per ton on each ton of ore treated, the Company may at its option declare this agreement null and void and of no force and effect and neither party hereto shall have any further right or claim under this agreement.

It is further agreed that if in the judgment of said Hyde at the expiration of said thirty (30) days' test work in the experimental plant, it does not appear that the process can be used by the Company to enough profit to insure him a sufficient compensation to warrant him in giving further time to the business, he may declare this agreement null and void and of no effect after he has instructed an agent of the Company thoroughly in the details of the process and has released the Company from all further financial obligation to him other than the payment of his expense account as herein provided.

It is further agreed and understood that if the treatment of ore in the said experimental plant has not indicated that the process can be operated to the financial benefit of the said Company the said Company shall so declare to the said Hyde and this agreement shall be null and void and neither party hereto will have any right or claim hereunder.

It is further agreed, however, that if in the judgment of the General Manager or Superintendent of the said Company, the said process is adaptable to the profitable treatment of the ore mined at the Butte and Superior Copper Company, Limited, mines at Butte,

Montana, and that by the use thereof a sufficient financial saving can be made by the said Company to justify the adoption of the use of the said process, the Company will immediately furnish funds for the purpose of installing a plant sufficient in size to treat all ore not recovered as jig concentrates in the present plant operated by the said Company at Basin, Montana, when the mill is treating 400 dry tons per day, provided, however, that the total cost of said last mentioned plant shall not exceed ten thousand ($10,000.00) dollars.

The said Hyde agrees to furnish plans for the erection and construction of said last mentioned plant and further agrees to personally supervise the erection and construction of the said plant, and the said Hyde further agrees that he will make no charge whatsoever for his services in this connection save and except as hereinafter provided for and the said Hyde further agrees that after the completion of said last mentioned plant, he will supervise its operation in the use of the "Gas Bubble Flotation" process for a period of at least ninety (90) days and that during said period he will fully instruct an agent of the said Company in the operation of the said plant so thoroughly that the said agent of the said Company will be able to operate the said plant without the assistance of the said Hyde, provided, however, that the said Hyde shall not be obliged to devote more of his time to the personal supervision of the plant than in the judgment of the General Manager or Superintendent of the said Company is necessary to its successful operation or for the complete instruction of the said Company's agent.

It is agreed and understood that during the erection of the last mentioned plant and during the operation of same the employees of the said Company may have full and complete access thereto, but that during the erection and the operation of the experimental plant the said Hyde shall have the right to exclude any and all persons from the building in which the said experimental plant is being constructed or operated.

It is agreed and understood that the said Hyde shall receive as full remuneration and compensation for all services rendered (excepting personal expense account as herein provided) a sum equal to one and two-thirds of every dollar of increased profit which shall accrue to the said Company through the operation of the said larger plant during any continuous period of thirty days which the said Hyde may select within the first ninety days that the said plant is operating after its final completion and during which the grade of ore treated has not averaged over twenty-one (21%) per cent. zinc nor less than eighteen and one-half (18½%) per cent. zinc and the tonnage treated has been at least twelve thousand (12,000) dry tons during said period of thirty (30) days, it being understood and agreed that the said Hyde shall receive no further remuneration or compensation from the said Company save and except the said compensation to be paid said Hyde on the increased profits which have accrued to the Company during the said period of thirty (30) days so selected by the said Hyde.

It is especially agreed and understood that the basis of the increased profits of the said Company in the operation of the said entire plant, upon which in-

creased compensation of the said Hyde shall be based, shall be determined by comparing the profits of the operation of the entire completed plant, including the said flotation plant, with the operation of the said concentrating plant, in the following manner, to-wit:

1. The net smelter returns for the produce made during the thirty days so selected by the said Hyde during which time his compensation shall be estimated, shall be calculated on the basis of $5.20 per hundred weight, as the market price of spelter, f. o. b. cars St. Louis, Mo.

2. The milling cost of the concentrating plant as operated before the installation of the flotation equipment shall be assumed to be one dollar and fifty-one ($1.51) cents per dry ton of ore treated.

3. The recovery of the concentrator plant as operated before the installation of the flotation equipment shall be assumed to be seventy (70%) per cent. with the proportion and grade of concentrates, as follows, to-wit: 82% of zinc recovered as concentrate containing 50.8% zinc, no penalty; 5% of zinc recovered as concentrate containing 50.8% zinc, 50 cent screen penalty only; 13% of zinc recovered as concentrate containing 45.0% zinc, 50 cent screen penalty only.

4. In arriving at what shall constitute a dry ton of ore it is agreed that 2.6% of the railway weight shall be deducted from the ore treated during the said thirty days' period.

5. From the sum of the calculated net smelter returns of the concentrating plant after the flotation process has been installed shall be substracted the total

cost of milling all ores in the Basin plant including the flotation plant, the result thereof being a sum herein designated as "Total results."

6. From the calculated net smelter returns on the same amount and equal grade of ore as treated during the said 30 days on the basis of a seventy per cent. recovery with value as stated in paragraph No. 3, shall be substracted the total calculated cost of milling in the concentrating plant at Basin, exclusive of the flotation plant installed by the said Hyde, at the rate of $1.51 per ton of dry ore treated, the result thereof being a sum herein designated as "present Results."

7. The said Hyde shall receive as full compensation for his services hereunder a sum equal to one and two-thirds of the amount represented by substracting the sum herein referred to as "Present Results" from the sum herein referred to as "Total Results," that is to say, if the sum represented as "Total Results" should be $100.00 and the sum represented as "Present Results" should be $60.00, the said Hyde shall receive as his full compensation one and two-thirds times $40.00, equal in amount to Sixty-six and two-thirds ($66.2/3) Dollars.

It is especially agreed and understood by and between the parties hereto that in no event shall the said Hyde receive as compensation for his services a sum in excess of $30,000.00.

It is especially agreed and understood that the said Company will at the expiration of any thirty continuous days' run of said mill and flotation plant during the said ninety days after the completion of the said flotation plant pay to the said Hyde as partial payment

not to exceed fifty (50%) per cent. of the amount calculated by the Superintendent of the Butte and Superior Copper Company, Limited, to be due him on the increased earnings, if any, during the said thirty days' period.

It is further agreed and understood that the remainder of the sum, if any, due to the said Hyde as compensation under this contract, shall be paid by the Butte and Superior Copper Company, Limited, upon receipt by the said Company of smelter returns on ores treated during the period, upon which the compensation of the said Hyde, if any, is based.

It is further agreed and understood that in all calculations provided for in this contract and in calculating the amount due said Hyde hereunder, all sums received or to be received by the Butte and Superior Copper Company, Limited, from the sale of lead concentrates shall be eliminated.

IN WITNESS WHEREOF, the parties hereto have hereunto set their names and seals this day and year first above written.

BUTTE AND SUPERIOR COPPER MINING COMPANY, LIMITED,

By A. B. Wolvin, Pres't.

James M. Hyde.

(Endorsed) AGREEMENT between Butte & Superior Copper Co., Limited, and J. M. Hyde.

EXHIBIT B.

UNITED STATES PATENT OFFICE.

Hon. Commissioner of Patents,

Sir:

Your petitioner, Minerals Separation, Limited, a corporation organized and existing under the laws of Great Britain and having its principal place of business in London, England, hereby represents as follows:

1. That on November 6th, 1906, Letters Patent of the United States for Ore Concentration, No. 835,120, were granted to Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, of London, England, and your Petitioner is now the sole and exclusive owner of the said Letters Patent.

2. That by the decision of the Supreme Court of the United States in Minerals Separation, Limited, and Minerals Separation American Syndicate, Limited, vs. James M. Hyde, filed the 11th day of December, 1916, your Petitioner is advised that the said Letters Patent No. 835,120, in so far as concerns Claims 9, 10 and 11 thereof, covers and includes more than the said inventors had a right to claim as new;

3. That the matter which the said patentees and your petitioner are, in accordance with the said decision of the said Court, not entitled to hold or claim by virtue of said Claims 9, 10 and 11 of said Letters Patent No. 835,120, was included therein by mistake, and without fraudulent or deceptive intent, and without any wilful default or intent to default or mislead the public.

4. That the subject-matter not herein and hereby disclaimed is definitely distinguishable from the part or parts disclaimed therein, and is truly and justly the invention of the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, and is a material and substantial part of the thing patented.

Your Petitioner, therefore, for the purpose of complying with the requirements of the law in such case made and provided, and of disclaiming those parts of the thing patented which your Petitioner does not ~~to~~ choose to claim or hold by virtue of said Letters Patent No. 835,120, does hereby disclaim from claims 9, 10 and 11 of said Letters Patent No. 835,120, any process of concentrating powdered ores excepting where the results obtained are the results obtained by the use of oil in a quantity amounting to a fraction of one per cent. on the ore.

IN WITNESS WHEREOF your Petitioner has caused these presents to be signed and sealed by John Ballot, its duly constituted attorney in fact under and by virtue of a power of attorney dated December 14, 1915, and recorded in the United States Patent Office November 27, 1916, in Liber K. 101, Page 176 of Transfers of Patents, this 27th day of March, 1917.

MINERALS SEPARATION LIMITED

By John Ballot (L. S.)

Attorney in fact.

In the presence of:

S. Gregory,

Henry D. Williams.

STATE OF NEW YORK,
County of New York,—ss:

On this 27th day of March, 1917, before me personally came JOHN BALLOT, attorney in fact of Minerals Separation, Limited, a Company organized under the laws of Great Britain, to me personally known, and known to me to be the individual described in and who, as such attorney, executed the within petition and acknowledged that he executed the same as the act and deed of Minerals Separation, Limited, therein described, by virtue of a power of attorney duly executed by said Minerals Separation, Limited, bearing date of December, 1915, which power of attorney was exhibited to me, and he states that it was still in force and effect.

HARRY C. LEWIS,
Notary Public, Bronx Co., No. 12,
Certificate filed in New York
County No. 48

(Seal).

Service of the foregoing answer acknowledged and copy thereof received this 4th day of May, 1917.

O. W. McCONNELL,
HENRY D. WILLIAMS,
WM. HOUSTON KENYON,
Solicitors for Plaintiff.

(Filed May 4, 1917).

GEO. W. SPROULE, Clerk.
By H. H. WALKER, Deputy.

Thereafter on the 25th day of August, 1917, the court rendered its opinion, and the same was filed herein, said opinion being in words and figures as follows, to-wit:

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, et al.,
Plaintiffs,

vs.

BUTTE & SUPERIOR MINING COMPANY,
Defendant.

COURT'S OPINION.

Herein the Court finds the issues in favor of plaintiffs and against defendant—that the patent is valid as to all claims in issue. That defendant has infringed as charged and now infringes by the unlicensed use of the patent process all claims in issue save 5, 6 and 7. And therefrom the Court concludes plaintiffs are entitled to recover of and from defendant in accordance herewith and the prayer of the bill. The decision and opinion attached is made a part hereof.

August 25th, 1917.

BOURQUIN, J.

This is trial on the merits of the suit reported in 237 Fed. 401.

It involves the patent and claims of the Hyde suit wherein the Supreme Court (242 U. S. 261) held the patent valid, but some claims invalid. The issues are as in the Hyde suit, viz.: novelty, invention, infringement and in addition defenses of unreasonable delay and defects in disclaimer of the invalid claims, and estoppel, by reason of statements by plaintiff's counsel to the Supreme Court in arguing the Hyde suit. The evidence herein is that submitted during twenty-five days and also the record in the Hyde suit. So far as heretofore known the nature and history of the discovery and invention (a process of ore concentration by air flotation) are fairly set out in reports of the Hyde suit (242 U. S. 261, 214 Fed. 100; 207 Fed. 956) of the Miami suit (244 Fed. 752; 237 Fed. 609), and of foreign suits cited in a footnote on page 754, 244 Fed. This suit is an important contribution and yet it discloses that though the use of the process is very wide, extensive and growing, its simplicity, economy and success still surprise and gratify the metallurgical world and its laws or principles of operation still interest and puzzle the scientist. "In the beginning it was very little knowledge and mostly guesswork and since then there has been every year a little more knowledge and still a great deal of guesswork," testifies one of the defendant's experts, Professor Bancroft of Cornell, a physical chemist of note, acquainted with the process since 1906 and lecturer upon it since 1912. Though speaking for himself alone, the learned doctor's esti-

mate might well be applied to all, practical layman and expert scientist alike.

At the same time, though heretofore somewhat ambiguous and obscure, present knowledge warrants the conclusion that the gist of this remarkable and valuable process and the actual discovery and invention are that whereas theretofore in ore concentration air had been used in desultory and fugitive bubbles as a makeshift incident of and supplemental to oil and skin flotation, air can be made to do all the work by creating in water-ore pulp modified by a suitable oily contaminant, an infinitude of bubbles.

It is the first of its kind and the patent sufficiently discloses it and methods to those skilled in the art.

Ambiguity and obscurity were as much due to the extreme mechanical simplicity of the process as to the inability then and now to know and explain all its laws or principles. The tendency was to attach prime importance to reduction in amount of oil used, when in fact this is but a necessary incident (for which there are substitutes if not equivalents) to the creation of the infinitude of bubbles that do the work. Despite this tendency and to overlook the simple and obvious the patent fairly clearly sets out the various ways and means to create this infinitude of bubbles and that they do the work.

The tests to determine which kind and amount of "oily substance yields the proportion of froth or scum desired", that flotation is "mainly from the inclusion of air bubbles," the froth, the agitation, all are so many guides in the patent, pointing the skilled oper-

ator to and including the infinitude of bubbles and the degree of agitation and amount of soap or oil to produce such bubbles, as surely as the word "crystalization" points to appropriate temperature in Commercial Co. vs. Co. 135 U. S. 189, and the words "uttered sound" by the "human voice" to articulate speech in the Telephone Cases, 126 U. S. 531.

Of the new evidence herein are learned dissertations upon the philosophy of the process,—upon the philosophy of bubbles, the heart of it, by Professors Bancroft of Cornell, and Taggart and Beach of Yale, and Drs. Sadtler of Philadelphia and Grosvenor of New York. From these it is gathered that the mere introduction of particles of air into a liquid does not create bubbles, but that they are created by subsequent agitation, either applied or self-agitation. Air particles introduced into pure water are incapable of creating bubbles. The reasons are the surface tension of the water and the lack of viscosity to create a sufficient film about the air particle compel the escape of the air particles into the atmosphere and no bubble is formed. Some soaps and oils possess the quality to lessen this surface tension of water and to give or increase this necessary viscosity. Their addition in appropriate quantity to water enables air particles introduced therein to create bubbles. Rather the meeting and co-action of water, oil and air create a film composed of all three and which surrounds the air particles. This film is more viscous than the mass of the water, and rising to the surface, the tension of which (and of the films) has been reduced by the oil, maintains itself as an air bubble.

This quality of oil is of first importance in the process. Another of lesser importance and which all oils possess is the " preferential affinity for metalliferous matter over gangue." Of lesser importance, because it is now known (and patented) that given another contaminant than oil but which possesses the like bubble-making quality though not the said " preferential affinity," the process is equally successfully worked. Air also possesses this " preferential affinity," and in view of the foregoing it well may be that the capture as well as the flotation of the metallic particles is more due to the great volume of air than to the infinitesimal oil. That in this process air without oil cannot capture and retain the metallic particles, seems due to its inability to create bubbles without oil. And why this capture in any case, is still of the unsolved phenomena of the process. On the other hand, water has a preferential affinity for gangue over metalliferous matter. That is, it wets the former more readily than it does the latter. And this contributes to the process, in that oil and air displace water from the surface of metalliferous matter more easily and quickly than from gangue, and so more readily capture and float the former than the latter. At the same time, despite these preferential affinities, in successful operation of the process the bubbles generally float more gangue than metal, more in quantity but not in proportion, and why is also unsolved.

There are " critical proportions " of any oil used in this process, perhaps not a sharp divide but rather a broad one. For the amount of oil to produce sufficient

and efficient bubbles must depend on many other factors, viz.: the working cell space, amount of water, degree of agitation, kind and amount of ore and perhaps on occasion amount of metallic content, kind of oil, etc. For example, if a ton of ore be agitated in a lake of water, doubtless a lake of oil will be necessary to create sufficient bubbles to capture the metal in the ore. But with bona fide operations in a good workmanlike manner—with the proportion of space, water, agitation, etc., such operations and manner dictate, the range in amount of oil will be narrow and well within one per cent. on the ore. These "critical proportions" are like those known to and solved by every child with its pipe and bowl of suds. Too little soap, the bubbles are few, small, fragile, and break quickly. Too much soap, they flow from the pipe in a torrent, are heavy, and refuse to float. The right amount of soap, the "critical proportions," his bubbles are large, detach readily and float high, far and for long. So is it with the bubbles in this process. With excess oil, but not enough to defeat bubbles altogether, though of fair aspect to the eye the bubbles will not do the work. In the excess oil in the films the metallic particles do not cling but swim or slide to the bubble's lower surface, "neck off"—detach, and sink. The untechnical workman recognizes there are "critical proportions" of oil, and small deviation from the predetermined amount in the feed, whether more or less, manifests itself to him in the appearance of the froth and poorer results; and he knows and remedies the error in oil.

Metallic content of ore seems of little importance —sometimes seems to require oil inversely. For example, a local operator with the process upon ore from the same vein as defendants, uses .7 lb. of oil per ton of ore of 11.23 per cent zinc content, making 50.59 per cent concentrates with 94 per cent recoveries, and in the same plant uses 2.83 pounds of the like oil per ton of tails of .97 per cent copper content, making 9.085 per cent concentrates and .266 per cent tails. It is apparent it is the air and not at all the oil that floats the mineral, noting that in the first of this example 211 pounds of zinc are floated by air bubbles in the creation of which only .7 lb. of oil is used. How the air particles are introduced into the pulp is immaterial. For introduced, they are still particles and not bubbles. Agitation subsequent to introduction is vital and alone can convert air particles into water-oil-air bubbles. It is this subsequent agitation that within the claims of the patent agitates "the mixture until the oil coated mineral matter forms into a froth" or "to form a froth." And it is all one whether this be applied agitation or self-agitation—the agitation set up by the air particles themselves in merely rising through the mass and thereby coming in contact with both water and oil, all co-acting to form bubbles which capture the metal. The mineral particles, either oiled before or by contact with bubbles, attach to and enter the viscous film of the bubbles. The particles also increase the viscosity of the bubble films, armor them and increase their stability, perhaps as stays that decreasing the area of unsupported surfaces, increase the latter's ability to resist rupture.

The great mass of new evidence herein is but cumulative of the Hyde suit. The only new publication is the California Journal of Technology detailing a suggestive but rather misleading and abandoned experiment sufficiently referred to and disposed of in the Miami suit.

There is much evidence that progress in the process and methods of operating it, now discloses that with some ores and some oils or mixtures of oils, the process can be fairly successfully operated with one per cent and more of oil. This is really admitted by plaintiff and is taken as proven. But it is also proven practically without conflict that in all the operations with this process not to exceed .2 per cent of oil is used, save by defendant and others in like situation and only since the decision in the Hyde suit and solely to avoid infringement; that some oils are effective and more are ineffective to operate the process; and that the excess oil used is useless, wasted and harmful.

But the defendant contends that this evidence demonstrates the process lacks novelty and invention, and that because of it the record is substantially different from the Hyde suit, the decision there should not control here, and the patent is and ought to be held invalid. This is without support in the patent and Hyde decision.

In describing the invention the patent refers to Cattermole, and says that the patentees "have found that if the proportion of oily substance be considerably reduced,—say to a fraction of one per cent on the ore," after vigorous agitation the metallic particles rise to

the surface in a froth; that the proportion thereof varies considerably with different ores and different oils, and so it is necessary to test "to determine which oily substance yields the proportion of froth or scum desired." An example of a particular ore and oil is of oil "say from .02 per cent. to 0.5 per cent. on the weight of ore," wherein on cessation of agitation "a large proportion of the mineral present rises to the surface in the form of a froth or scum which has derived its power of flotation mainly from the inclusion of air bubbles introduced in the mass by the agitation, such bubbles or air-films, adhering only to the mineral particles which are coated" with the oil which has "a preferential affinity for metalliferous matter over gangue." It adds that the minimum of that oil "may be under .1 per cent. of the ore, but this proportion has been found suitable and economical."

The claims are: (1) For "oily liquid * * * to a fraction of 1 per cent. on the ore;" (2) For oleic acid "to 0.02—0.5 per cent. on the ore;" and (3) For "a small quantity of oil." These last were held invalid. In upholding the patent the Supreme Court says that "as described and practiced" the process consists "in the use of an amount of oil which is 'critical' and minute as compared with the amount used in prior processes 'amounting to a fraction of 1 per cent. on the ore,' and in so impregnating with air the mass * * * by agitation * * * as to cause to rise to the surface * * * a froth * * * which is composed of air bubbles with only a trace of oil in them, which carry in mechanical suspension a very high percentage of the metal;" that "it differs so

essentially from all prior processes in its character, in its simplicity of operation, and in the resulting concentrate, that we are persuaded that it constitutes a new and patentable discovery;" that the facts are not overstated by Liebmann that "The present invention differs essentially from all previous results. It is true that oil is one of the substances used but it is used in quantities much smaller than was ever heard of, and it produces a result never obtained before. The minerals are obtained in a froth of a peculiar character, consisting of air bubbles which in their covering film have the minerals embedded in such manner that they form a complete surface all over the bubbles. A remarkable fact with regard to this froth is that, although the very light and easily destructible air bubbles are covered with a heavy mineral, yet the froth is stable and utterly different from any froth known before, being so permanent in character that I have personally seen it stand for twenty-four hours without any change having taken place. The simplicity of the operation, as compared with the prior attempts, is startling. All that has to be done is to add a minute quantity of oil to the pulp to which acid may or may not be added, agitate for from two and one-half to ten minutes and then after a few seconds collect from the surface the froth which will contain a large percentage of the minerals present in the ore;" that the court is convinced "that the small amount of oil used makes it clear that the lifting force which separates the metallic particles of the pulp from the other substances of it is not to be found principally in the buoyancy of the oil used, as was the case in

prior processes, but that this force is to be found, chiefly, in the buoyancy of the air bubbles introduced into the mixture by an agitation greater than and different from that which had been resorted to before, and that this advance on the prior art and the resulting froth concentrate so different from the product of other processes make of it a patentable discovery as new and original as it has proved useful and economical;" that the court agrees with the House of Lords' decision; that the process is not one before described but a new method in which flotation is by the "buoyancy of air bubbles;" that tests to determine the necessary "amount of oil and the extent of agitation," and "the range of treatment within the terms of the claims," satisfy the law; but that while the patentees "discovered the final step, precedent investigations were so informing that this final step was not a long one and the patent must be confined to the results obtained by the use of oil within the proportions often described in the testimony and in the claims of the patent as 'critical proportions' 'amounting to a fraction of 1 per cent on the ore' and therefore * * * the patent is valid as to claims Nos. 1, 2, 3, 5, 6, 7, and 12 * * * but * * * invalid as to claims 9, 10 and 11." Those held invalid are those heretofore referred to as (3). It seems clear neither patent nor decision undertakes to say the process depends upon less than 1 per cent of oil or is inoperative with 1 per cent or more of oil.

It is true that in the beginning and during the Hyde suit the patentees inclined to so believe or at least believed better results would be obtained by a fraction of

1 per cent of oil. Perhaps limited investigations and experience with few ores and oils justified the belief. Indeed, all experience to date, plaintiff's, defendant's, strangers', demonstrates that with any ore and any efficient oil, less than 1 per cent of oil gives better results, all circumstances considered. The "critical proportions" referred to seem absent, in terms, from the patent, and ought not to be adversely inferred in disregard of construction in favor of the patentee where the patent is ambiguous. The patent describes oil "considerably reduced," and refers to a "fraction of 1 per cent," by way of example. And though some claims limit oil to such fraction, and a limited range within it. others are for "a small quantity" and for that reason held invalid by the Supreme Court. With the later knowledge of this suit it is doubted that such would be the decision now. It is to be observed that this limitation of the patent indicates the Supreme Court believed the process might be operative with 1 per cent and more of oil, and contemplated that this would not defeat the patent, but might affect infringement. If the patent is limited to the use of a fraction of 1 per cent of oil, that the process can be operated with 1 per cent and more is not material to validity, though it may be to infringement. For if a patentee limits his claim voluntarily or because he does not know the extent of his invention, he abandons the excess and the patent is valid to the extent of the claim. If it be conceded that new evidence might warrant and demand that a trial court hold invalid a patent by the Supreme Court held valid, such evidence must be unequivocal, clear and

convincing, in quality and quantity that inspires confidence and produces conviction that the patent is invalid and that the Supreme Court would so determine beyond a reasonable doubt. Not only does it fail here, but it strengthens the conviction that the patent is valid.

The disclaimer to conform to the Supreme Court's decision that claims 9, 10 and 11 are invalid, was filed 107 days after said decision and after mandate but before expiration of time for rehearing. It was timely filed. In substance it fairly conforms to the language of the decision, disclaiming " from claims 9, 10 and 11 * * * any process of concentrating powdered ores excepting where the results obtained are the results obtained by the use of oil in a quantity amounting to a fraction of 1 per cent on the ore." The parties differ in its interpretation even as they do in respect to the decision. Written words, not oral claims, control. The patent claims included what the patentees were entitled to and more. The decision pointed out the excess. The patentees disclaim the excess. They can safely rely upon the decision and a disclaimer conforming to the language of the decision is sufficient. The patent valid, defendant admits infringement from before suit commenced to January 7, 1917, and denies infringement thereafter. During the period of admitted infringement it applied the process to some 1,598,000 dry tons of crushed ore, the tailings from water concentration, of mineral zinc content by yearly averages as follows: 1913, 15.14 per cent; 1914, 14.14 per cent; 1915, 13.66 per cent; 1916, 12.89 per cent.

Oil used by yearly averages is as follows: 1913, 5.58 pounds; 1914, 2.22 pounds; 1915, 1.49 pounds; 1916, 1.43 pounds.

The concentrate grade by yearly averages is as follows: 1913, 47.60 per cent; 1914, 53.03 per cent; 1915, 54.62 per cent; 1916, 53.83 per cent, and recoveries (apparent) likewise are for 1913, 80.03 per cent; 1914, 86.08 per cent; 1915, 90.18 per cent; 1916, 92.63 per cent.

Progress is indicated by leaner ores, less oil, higher grade concentrates, greater recoveries, all coincident with advancing time.

It is noted that the process is responsible for advance in methods, devices and machines for its operation. To briefly describe defendant's during infringement admitted the water-concentrate tailings, oil added, flowed to the head of a pyramid machine of seven cells in series, each cell containing a revolving perpendicular spindle and horizontal blades and having two opposed spitzkasten. The agitation was very violent. The tails from each cell flowed by gravity to the cell immediately below, those from the last cell flowing to Callow air cells which produced froth middlings returning to the head of the pyramid, and tails, to waste. The first three cells of the pyramid produced froth rougher concentrates which flowed to cleaners, and the other cells produced froth middlings which returned to the head of the pyramid. The rougher concentrates passed through five cleaner cells for washing. This produced concentrates which flowed to and through five re-cleaner cells, and tails which returned to the

head of the pyramid. The re-cleaners produced final concentrates and tails which returned to the head of the cleaner. Commencing January 7, 1917, the defendant's methods are as before, save pneumatic as well as mechanical agitation is employed in the lower four cells of the pyramid. Some spitzkasten are blocked, an additional cleaner operation is used, and from which for some unexplained reason 8.65 per cent zinc tails go to waste, and oil in amount 1 per cent and more on the ore is used. Defendant not very insistently claims results for this latter period are more profitable than for the former, but plaintiff's analysis, neither denied nor criticized, and beyond both, of defendant's reports and tabulations makes manifest the fact is otherwise to the extent of about $1.75 per ton of ore—an enormous loss on 45,000 tons monthly. There is considerable like testimony in reference to operations by other infringers. However, coming as it does after very large operations, investigations and experiments of several years, after the Supreme Court's decision in the Hyde suit, it is incredible that use of 20 pounds of oil per ton results in more profit than one and a half to four pounds per ton. If it does, these great concerns would not have waited to discover the fact and employ it, until after the said decision. Defendant practically admits that it now uses the present amount of oil merely to avoid the patent. It is done, says its counsel in argument, " because the Supreme Court has said it is not at liberty to use less than one-half per cent," and " out of abundance of caution " it uses " more than 1 per cent." The evidence likewise persuades. If the excess oil

were effective and useful and not inert, useless and harmful, it would be without the claims of the patent, would be of that the patentees abandoned to the public, and would involve no infringement.

Plaintiffs somewhat laboriously argue that though the Supreme Court held that the claim for use of "a small quantity of oil" to produce froth is too broad and so invalid yet since the court identifies the invention by the "results obtained" though confining it to the "results obtained" by the use of oil "amounting to a fraction of 1 per cent on the ore," the import of the decision is that if the results obtained by operation of the process with oil in amount 1 per cent and more on the ore are like and the same results obtained with a fraction of 1 per cent of oil, it is within the patent and is infringement. This is more ingenious than sound, and would deprive the decision of effect. The court does not confine the patent to the *like* or *same* results obtained, but to *the* results obtained by the use of a fraction of 1 per cent of oil on the ore. It is believed, however, that the court employed the word "use" in its, or the ordinary sense of beneficial service. Patent law is not concerned with the useless, and a valuable result sought is not "obtained" *by* but *despite* the use of an excess of an essential ingredient, which excess renders no or ill-service. From the evidence it appears the larger part of the oil used by defendant and all in excess of a fraction of 1 per cent on the ore, if not inert is ineffective, wasted and injurious to the process and results. Before January 7, 1917, defendant used only pine oil and about 1.43 pounds per ton of

ore, with excellent results. Since said date it uses a mixture of 20 to 24 pounds of oil per ton of ore, made up of 18 per cent of pine oil, 12 per cent of kerosene oil, and 70 per cent of fuel oil, with poorer results. The kerosene and fuel oil are petroleums. As before stated many oils are ineffective to operate the process and that is because they have not the quality that contributes to bubble-making. What this quality consists of, wherein it lies, does not appear. With these ineffective oils, agitation will not produce froth and so there is no flotation of the metallic particles. One of defendant's witnesses testifies that in the laboratory and plant of the Utah Copper, one thousand oils have been tried, of which but two mixtures give satisfaction. Petroleums seemed generally ineffective, by the evidence of both parties, though some of defendant's witnesses testify to sometimes successful experiments with them. Incidentally, there is suspicion that with experiments as with figures, can be done anything for or against, without impropriety in the operator. Some petroleums are used in limited quantities but always in combination with a recognized bubble-making oil, and only, it is said, for a somewhat bubble stabilizing effect. Defendant's present mixture of oil contains more pine oil on the ore than it used alone before January 7, 1917. The other factors the same, it is obvious the excess petroleums in the mixture are responsible for the poorer results.

Defendant uses the patent process, uses plaintiff's invention of ore concentration by air bubble flotation, uses the same elements in the same combination in the

same way with the same function to the same, but poorer results; and exceeding the patent claims in reference to one ingredient (oil) uselessly, wastefully and injuriously and merely with intent to avoid the letter of the patent does not avoid infringement. The addition of the excess oil no more adds to or changes the process, no more avoids infringement, than would the addition of milk or other useless substance not a part of the process. The excess oil either exercises no function or less efficiently exercises the same function in the same way as the limited oil and to the same but poorer results. To secure to patentees their invention, the law looks quite through mere devices and forms, to the substance of things. And if in substance the invention is taken, if the thing that does the work is taken, all devices to evade the letter of the patent avail nothing to escape the consequences of infringement. Neither principle nor authority to the contrary, is cited or known to the court.

In the matter of estoppel affecting infringement, it suffices to say neither in pleading nor proof do the elements of estoppel appear. Although the evidence is of great volume and the arguments of relative length, all have been carefully considered but require no additional reference herein.

The patent is valid in respect to all claims involved. Defendant throughout has infringed and now infringes all said claims save 5, 6 and 7, and decree accordingly.

BOURQUIN, J.

Thereafter on the 17th day of September, 1917, the court entered decree herein and the same was filed and entered on September 17th, 1917, said decree being as follows, to-wit:

At a stated term of the United States District Court in and for the District of Montana, held at the Courtrooms in the Federal Court Building in the City of Butte in said District this 17th day of September, 1917.

Present:

HON. GEORGE M. BOURQUIN,
District Judge.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,
Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,
Defendant.

In Equity.

INTERLOCUTORY DECREE.

This case came on for trial and was tried in open court on April 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 28

and 30, May 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16 and 17, 1917, and was argued by counsel Henry D. Williams, William Houston Kenyon and Lindley M. Garrison, Esquires, in behalf of the plaintiffs, and Walter A. Scott, Thomas F. Sheridan and J. Bruce Kremer, Esquires, in behalf of the defendant; and thereupon it is ordered, adjudged and decreed as follows, viz.:

That the Letters Patent of the United States issued to Henry L. Sulman, Hugh F. K. Picard and John Ballot on November 6, 1906, No. 835,120, for improvements in Ore Concentration are good and valid in law as to claims 1, 2, 3, 5, 6, 7 and 12, and are good and valid in law as to claims 9, 10 and 11 as limited by the disclaimer filed in the United States Patent Office on the 28th day of March, 1917.

That the said Henry L. Sulman, Hugh F. K. Picard and John Ballot were the true, original, first and joint inventors of the invention described in the said Letters Patent, and particularly pointed out in claims 1, 2, 3, 5, 6, 7 and 12, and claims 9, 10 and 11 as limited by the aforesaid disclaimer filed on March 28, 1917.

That the plaintiffs are the full and exclusive owners of all right, title and interest in and to said Letters Patent as set forth in the Bill of Complaint and the Supplemental Bill of Complaint.

That processes employed by defendant Butte & Superior Mining Company, both before and after the filing of the Bill of Complaint herein and to and including January 7, 1917, embodied the invention of said Letters Patent No. 835,120 in suit, and infringed

claims 1, 2, 3, 5, 6, 7 and 12 thereof, and claims 9, 10 and 11 as limited by said disclaimer; and that processes employed by the defendant from the 7th day of January, 1917, down to and through the time of trial, embodied the invention of Letters Patent in suit No. 835,120, and infringed claims 1, 2, 3 and 12 thereof, and claims 9, 10 and 11 as limited by the aforesaid disclaimer.

That a permanent injunction issue out of and under the seal of this Court, directed to the defendant and restraining the defendant, its confederates, associates, officers, servants, agents, clerks and workmen from any installation or use in any manner of the said patented invention, and particularly claims 1, 2, 3, 5, 6, 7 and 12 thereof, and claims 9, 10 and 11 as limited by the said disclaimer, or any part thereof, in violation of the rights of the plaintiffs as aforesaid, and from encouraging and inducing others to infringe the said Letters Patent, and from defending other infringers of said Letters Patent, or reimbursing them the expense of defending against said Letters Patent, in whole or in part, or otherwise aiding or abetting others to install or use processes of ore concentration in infringement of said Letters Patent.

That the plaintiffs do recover of the defendant the profits which the defendant has derived, received or made by reason of the aforesaid infringement, and that plaintiffs do also recover from the defendant any and all damages sustained by the plaintiffs by reason of said infringement; and it is hereby referred to one hereafter to be named as a master of this Court to

take and state the account of such gains, profits and advantages, and to assess such damages and to return thereon with all convenient speed, and the defendant, its confederates, officers, servants, agents, clerks and workmen are hereby directed and required to attend the aforesaid master from time to time as required, and to produce before him such books, papers and documents as relate to the matters at issue, and to submit to such oral examination as the Examiner may require, or such account to be taken and stated by the Court, as the Court may hereafter order.

Sept. 17, 1917.

BOURQUIN, J.

Filed and entered Sept, 17, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

In Equity.

ASSIGNMENT OF ERRORS.

COMES NOW the defendant above-named and files the following assignment of errors upon which it will rely upon the prosecution of its appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the decree made by this honorable court on the 17th day of September, 1917, in the above styled cause:

1. The court erred in finding, holding and decreeing that the Letters Patent of the United States issued

to Henry L. Sulman, Hugh F. K. Picard and John Ballot on November 6th, 1906, and numbered 835,120 for improvements in ore concentration were each and all of said claims involved, to-wit: claims 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12, good and valid in law.

2. The court erred in finding, holding and decreeing that the defendant has infringed said Letters Patent 835,120 as to claims 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12, or any of said claims.

3. The court erred in finding, holding and decreeing that said Henry L. Sulman, Hugh F. K. Picard and John Ballot were the true, original, first and joint inventors of the invention described in said Letters Patent 835,120, and particularly pointed out in claims 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12 thereof.

4. The court erred in finding, holding and decreeing that said Henry L. Sulman, Hugh F. K. Picard and John Ballot were the true, original, first and joint inventors of the invention described in said Letters Patent 835,120, as set out in claims 9, 10 and 11, as limited by the disclaimer filed in the United States Patent Office on the 28th day of March, 1917.

5. The court erred in finding, holding and decreeing that claims 9, 10 and 11 of said patent as limited by the disclaimer filed in the United States Patent Office on the 28th day of March, 1917, are good and valid in law.

6. The court erred in finding, holding and decreeing that the plaintiffs are the full and exclusive owners of all right, title and interest in and to said Letters Patent as set forth in the Bill of Complaint and the Supplemental Bill of Complaint.

7. The court erred in finding, holding and decreeing that the processes employed by the defendant, Butte and Superior Mining Company, both before and after the filing of the Bill of Complaint, and to and including January 7th, 1917, embodied the invention of said Letters Patent 835,120, or infringed claims 1, 2, 3, 5, 6, 7 or 12 thereof, or claims 9, 10 or 11 thereof, as limited by said disclaimer filed in the United States Patent Office on the 28th day of March, 1917.

8. The court erred in finding, holding and decreeing that processes employed by the defendant from the 7th day of January, 1917, down to or through the time of trial, embodied the invention of Letters Patent No. 835,120, or infringed claims 1, 2, 3 or 12 thereof, or claims 9, 10 or 11, as limited by the aforesaid disclaimer filed in the United States Patent Office on the 28th day of March, 1917.

9. The court erred in finding, holding and decreeing that a permanent injunction issue out of and under the seal of said court directed to the defendant, Butte and Superior Mining Company, and enjoining or restraining said defendant, its associates, officers, servants, agents, clerks or workmen, from any installation or use in any manner of the said patented invention, or any part thereof, or particularly claims 1, 2, 3, 5, 6, 7 or 12 thereof, or claims 9, 10 or 11, as limited by said disclaimer filed in the United States Patent Office on the 28th day of March, 1917, in violation of the rights of the plaintiffs, or either of them.

10. The court erred in finding, holding and decreeing that the said defendant, or its officers, agents,

servants or employees be restrained from participating in any litigation whatsoever, or intsalling, using, or directing the installing or use of, or advising the installation or the use of the processes of ore concentration described in said Letters Patent.

11. The court erred in finding, holding and decreeing that the plaintiffs do recover of the defendant the profits which the defendant has derived, received or made by reason of the aforesaid infringement, and that plaintiffs do also recover from the defendant any and all damages sustained by the plaintiffs by reason of said infringement.

12. The court erred in finding, holding and decreeing that, a master of said court, take and state the account of such gains, profits and advantages, and assess such damages and to return thereon with all sufficient speed, to the said court, and that the defendant, its officers, servants, agents, clerks or workmen, or associates, be directed and required to attend the aforesaid master and to produce before him books, papers or documents relating to the matters at issue, and to submit to such oral examination as to the examiner or master may require.

13. The court erred in entering an interlocutory decree in said cause in favor of the plaintiffs and against the defendant.

14. The court erred in holding that the uses of oil in amounts outside of the critical proportions, namely, above one-half of one per cent (.5%) as the upper limit, and .02% as the lower limit, in a process of ore concentration is disclosed and covered in said Letters Patent 835,120.

15. The court erred in holding that the said defendant, Butte and Superior Mining Company, infringed claims 1, 2, 3, 5, 6, 7, 9, 10, 11 and 12, and each of them, by the use of oil in quantities above one-half of one per cent (.5%) on the ore in its operation of ore concentration.

16. The court erred in holding that said Letters Patent 835,120 disclosed and covered any amount of agitation, violent or otherwise.

17. The court erred in holding that the said plaintiffs had properly disclaimed the original claims 9, 10 and 11 of patent 835,120.

18. The court erred in holding that the plaintiffs had not been negligent or had not unduly delayed the filing of the alleged disclaimer.

19. The court erred in holding that said disclaimer was filed within the time and in the manner required by law, such disclaimer having been filed on the 28th day of March, 1917; said disclaimer being in words and figures as follows, to-wit:

UNITED STATES PATENT OFFICE.

Hon. Commissioner of Patents,

Sir:

Your Petitioner, Minerals Separation, Limited, a corporation organized and existing under the laws of Great Britain and having its principal place of business in London, England, hereby represents as follows:

1. That on November 6th, 1906, Letters Patent of the United States for Ore Concentration, No. 835,120, were granted to Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, of London, England, and your Petitioner is now the sole and exclusive owner of the said Letters Patent.

2. That by the decision of the Supreme Court of the United States in Minerals Separation, Limited, and Minerals Separation American Syndicate, Limited, vs. James M. Hyde, filed the 11th day of December, 1916, your Petitioner is advised that the said Letters Patent No. 835,120, in so far as concerns Claims 9, 10 and 11 thereof, covers and includes more than the said inventors had a right to claim as new.

3. That the matter which the said patentees and your Petitioner are, in accordance with the said decision of the said Court, not entitled to hold or claim by virtue of said claims 9, 10 and 11 of said Letters Patent No. 835,120, was included therein by mistake, and without fraudulent or deceptive intent, and without any wilful default or intent to defraud or mislead the public.

4. That the subject-matter not herein and hereby disclaimed is definitely distinguishable from the part or parts disclaimed herein, and is truly and justly the invention of the said Henry Livingstone Sulman, Hugh Fitzalis Kirkpatrick-Picard and John Ballot, and is a material and substantial part of the thing patented.

Your petitioner, therefore, for the purpose of complying with the requirements of the law in such case made and provided, and of disclaiming those parts of

the thing patented which your Petitioner does not choose to claim or hold by virtue of said Letters Patent No. 835,120, does hereby disclaim from claims 9, 10 and 11 of said Letters Patent No. 835,120, any process of concentrating powdered ores excepting where the results obtained are the results obtained by the use of oil in a quantity amounting to a fraction of one per cent. on the ore.

IN WITNESS WHEREOF your Petitioner has caused these presents to be signed and sealed by John Ballot, its duly constituted attorney in fact under and by virtue of a power of attorney dated December 14, 1915, and recorded in the United States Patent Office November 27, 1916, in Liber K 101, page 176 of Transfers of Patents, this 27th day of March, 1917.

MINERALS SEPARATION LIMITED

By John Ballot (L. S.)

Attorney in fact.

In the presence of:

S. Gregory,

Henry D. Williams.

STATE OF NEW YORK,
County of New York,—ss:

On this 27th day of March, 1917, before me, personally came JOHN BALLOT, attorney in fact of Minerals Separation, Limited, a Company organized under the laws of Great Britain, to me personally known, and known to me to be the individual described in and who, as such attorney, executed the within petition and acknowledged that he executed the same as the act and deed of Minerals Separation, Limited, therein described, by virtue of a power of attorney duly executed by said Minerals Separation, Limited, bearing date of December 14, 1915, which power of attorney was exhibited to me, and, he stated that it was still in force and effect.

HARRY C. LEWIS,
Notary Public, Bronx Co., No. 12,
Certificate filed in New York
County No. 41.

(Seal.)

$10.00 REC'D. MAR. 28TH, 1917, C. C. U. S. PAT. OFFICE

Disclaimer recorded March 28—1917.

20. The court erred in finding, holding and decreeing that said disclaimer was in fact or in law a disclaimer at all.

21. The court erred in holding that said disclaimer complied with the requirements of the statutes of the United States with reference to the filing of disclaimer so as to preserve and retain the portion of the patent not disclaimed or relinquished or returned to the public domain.

22. The court erred in holding that the said alleged disclaimer was properly executed.

23. The court erred in holding that the said alleged disclaimer was executed by the necessary party or parties.

24. The court erred in holding that a disclaimer was ever filed.

25. The court erred in holding that the said plaintiffs were not estopped by the admission of its counsel, W. H. Kenyon, Esq., when before the Supreme Court of the United States in the case of Minerals Separation, et al. vs. James M. Hyde, wherein the said W. H. Kenyon stated to the court what constituted the invention disclosed and covered by said patent 835,120, and particularly wherein he stated to the court that the said invention "was just coming into being when the amount of oil was reduced to one-half of one per cent."

26. The court erred in not ~~disclaiming~~ dismissing the action of the plaintiffs for want of equity.

THOS. F. SHERIDAN,
J. EDGAR BULL,
J. BRUCE KREMER,
Solicitors for Defendant.

Service of the foregoing assignment of errors acknowledged and copy thereof received this 20th day of September, 1917.

HENRY D. WILLIAMS,
W. H. KENYON,
LINDLEY M. GARRISON,
O. W. McCONNELL,
Solicitors for Plaintiffs.

Filed Sept 20, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

PETITION FOR APPEAL AND ALLOWANCE.

TO THE HONORABLE GEORGE M. BOURQUIN, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MONTANA:

The above-named defendant, Butte and Superior Mining Company, formerly Butte and Superior Copper Company, Limited, considering itself aggrieved by the decree entered in the above styled court on the 17th day of September, 1917, in the above styled cause and

particularly by that part of the said decree which adjudges United States Patent No. 835,120 as good and valid in law as to claims 1, 2, 3, 5, 6, 7 and 12, and as to claims 9, 10 and 11, limited by the disclaimer, filed in the United States Patent Office and adjudges that the grantees of each of said patents are the true, original, first and joint inventors of the invention described in said patent, and particularly pointed out in the claims thereof above referred to and adjudges that the plaintiffs are the full and exclusive owners of said Letters Patent, and adjudges that the process employed by the defendant both before and after the filing of the bill of complaint and to and including January 7th, 1917, embodied the invention of said Patent No. 835,120, and infringed claims 1, 2, 3, 5, 6, 7 and 12, thereof, and claims 9, 10 and 11 as limited by said disclaimer, and adjudges that the process employed by the defendant from the 7th day of January, 1917, down to and through the day of trial embodied the invention of the patent in suit and infringed claims 1, 2, 3, 5, 6, 7 and 12 thereof, and claims 9, 10 and 11 as limited by the aforesaid disclaimer, and adjudges that the said defendant has infringed said patent and the claims thereof mentioned, and as decrees that a perpetual injunction issue enjoining the defendant, Butte and Superior Mining Company, its officers, associates, etc., from the use or installation in any manner of the alleged patented invention, or particularly claims 1, 2, 3, 5, 6, 7 and 12 thereof, or claims 9, 10 and 11 as limited by said alleged disclaimer, and as decrees that the plaintiffs shall recover of defendants the profits which the

defendant has derived, received or made by reason of said infringement, and shall recover any damages sustained by plaintiffs by reason of said infringement, and shall recover any costs in this suit to be taxed, hereby appeals from the said decree as specified to the United States Circuit Court of Appeals, for the Ninth Circuit, and prays that its appeal may be allowed and that a citation may issue as provided by law directed to the above-named plaintiffs, and each of them, commanding said plaintiffs, and each of them, to appear before the United States Circuit Court of Appeals, for the Ninth Circuit, to do and receive what may appertain to justice to be done in the premises; and that a duly authenticated transcript of the record and proceedings upon which said decree was made together with the accompanying assignment of errors be transmitted with this appeal to the United States Circuit Court of Appeals, for the Ninth Circuit.

Your petitioner further prays that a proper order touching the security to be required in order to perfect its appeal be made and a suitable bond be fixed by the court.

THOS. F. SHERIDAN,
J. EDGAR BULL,
J. BRUCE KREMER,
Solicitors for Defendant.

The foregoing petition is hereby granted and the appeal is allowed in the above styled cause upon the defendant filing a bond in the sum of $10,000.00, with sufficient surety or sureties to be conditioned as required by law.

GEO. M. BOURQUIN,
Judge of the District Court of the United States, for the District of Montana.

Service of the foregoing petition for appeal and allowance acknowledged and copy thereof received this 20th day of September, 1917.

HENRY D. WILLIAMS,
W. H. KENYON,
LINDLEY M. GARRISON,
O. W. McCONNELL,
Solicitors for Plaintiffs.

Filed Sept. 20, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That we, BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited, as principal, and Western Accident and Indemnity Company, a corporation, organized and existing under and by virtue of the laws of Montana, as surety, are held and firmly bound unto the Minerals

Separation, Limited, Minerals Separation American Syndicate, Limited, and Minerals Separation North American Corporation, in the sum of Ten Thousand ($10,000.00) Dollars, for the payment of which well and truly to be made, we bind ourselves jointly and severally, and each of our successors and assigns, firmly by these presents.

Sealed with our seals and dated this 20th day of September, 1917.

WHEREAS, the above-named defendant, to-wit: the principal in this obligation, has prosecuted an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse a decree made and entered in said cause on the 17th day of September, 1917, in favor of the said plaintiffs;

NOW, WHEREFORE, the condition of this obligation is such that if the said defendant shall prosecute its said appeal to effect and answer all damages and costs if it fails to make its plea good and if the said decree be affirmed by the said United States Circuit Court of Appeals or by the Supreme Court of the United States, then the above obligation to be void, otherwise to remain in full force and virtue.

It is expressly agreed by the Western Accident and Indemnity Company, the surety above-named, that in case of a breach of any condition of this bond the court may, upon notice of not less than ten (10) days to said Western Accident and Indemnity Company, proceed summarily in this action to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment against the said

Western Accident and Indemnity Company, and award execution therefor.

WESTERN ACCIDENT AND INDEMNITY COMPANY,

By H. W. COOK,
President.

(Seal.)

Attest: WM. C. TUCKER,
Secretary.

BUTTE AND SUPERIOR MINING COMPANY,

By J. BRUCE KREMER,
Attorney and Agent.

The foregoing bond on appeal is hereby approved this 20th day of September, 1917.

GEO. M. BOURQUIN,
Judge of the District Court of the United States for the District of Montana.

Service of the foregoing bond on appeal acknowledged, approved and copy thereof received this 20th day of September, 1917.

HENRY D. WILLIAMS,
W. H. KENYON,
LINDLEY M. GARRISON,
O. W. McCONNELL,
Solicitors for Plaintiffs.

Filed Sept. 20, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

In Equity.

CITATION ON APPEAL.

THE PRESIDENT OF THE UNITED STATES to Minerals Separation, Limited, a Corporation, Minerals Separation American Syndicate, Limited, a corporation, and Minerals Separation North American Corporation, a corporation, and to Henry D. Williams, Esq., Lindley M. Garrison, Esq., William Houston Kenyon, Esq., and Odell W. McConnell, Esq., their solicitors:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Ap-

peals for the Ninth Circuit at the City of San Francisco, State of California, within thirty (30) days from the date hereof pursuant to an appeal filed in the office of the Clerk of the District Court of the United States for the District of Montana, wherein Butte and Superior Mining Company, designated as Butte and Superior Copper Company, Limited, a corporation, in the above styled cause is the appellant and Minerals Separation, Limited, Minerals Separation American Syndicate, Limited, and Minerals Separation North American Corporation, are appellees, to show cause, if any there be, why the said decree in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties on that behalf.

WITNESS THE HONORABLE, George M. Bourquin, Judge of the United States District Court, for the District of Montana, this 17th day of September, A. D., 1917, and of the Independence of the United States, the one hundred and forty-second, at the City of Butte, State of Montana.

GEO. M. BOURQUIN,

Judge of the District Court
of the United States, for
the District of Montana.

SERVICE of the foregoing citation on appeal acknowledged and copy thereof received this 20th day of September, A. D., 1917.

HENRY D. WILLIAMS,
W. H. KENYON,
LINDLEY M. GARRISON,
O. W. McCONNELL,
Solicitors for Plaintiffs.

Filed Sept. 20th, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

In Equity.

PRAECIPE FOR MAKING UP TRANSCRIPT TO GEORGE W. SPROULE, CLERK OF UNITED STATES DISTRICT COURT, DISTRICT OF MONTANA.

Please prepare transcript of the record of this case for appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and incorporating therein, omitting endorsements, viz:

Bill of complaint.

Subpoena in equity with return.

Answer filed October 28th, 1913.

Supplemental answer filed March 27th, 1917.

Answer filed April 17th, 1917.

Amendment to answer filed April 17th, 1917.

Supplemental and amended bill of complaint filed May 1st, 1917.

Answer to plaintiffs' supplemental bill of complaint.

Answer to plaintiff's bill of complaint as amended.

Stipulations with reference to preparation of record.

Final record in the case.

Statement of the case for record on appeal, including all testimony, rulings of the court and proceedings during the trial of the case embodying full testimony in said case.

All exhibits in said case submitted by both plaintiffs and defendant introduced during the trial. All physical exhibits to be forwarded to the United States Circuit Court of Appeals for the Ninth Circuit as part of the record.

Opinion of the court.

Decree.

Petition for appeal.

Assignment of errors.

Order allowing appeal.

Order suspending injunction.

Bond suspending injunction.

Bond on appeal.

Stipulation for making up transcript of record on appeal.

All orders relative to appeal, preparation and filing thereof.

Praecipe for transcript.

Clerk's certificate.

Respectfully,

THOS. F. SHERIDAN,
J. EDGAR BULL,
J. BRUCE KREMER,
Solicitors for Defendant.

Service accepted Sept. 20, 1917.

HENRY D. WILLIAMS,
W. H. KENYON,
LINDLEY M. GARRISON,
O. W. McCONNELL,
Solicitors for Plaintiffs.

Filed Sept. 20, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

In Equity.

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto that the transcribed record of the testimony herein may be by the court approved and settled as the statement of the evidence and proceedings herein upon presentation of the same to the court, the said statement as hereinbefore stipulated to be in the next exact form taken down and transcribed by the reporters at the time of the hearing of the said case and to include copies of the exhibits in said case,

save physical exhibits, and it is stipulated that the court may settle the said statement upon presentation, it being understood that if any error is made in the statement to be presented to the court, the same shall be corrected by application to the court after settlement, if it is apparent to the court that error has been made in the transcribing, copying or printing of the said record, it being the intention hereof that the statement on appeal shall conform to the record made by the stenographers and reporters during the trial errors excepted.

It is further stipulated that the statement presented may be signed and settled by the court without further notice or hearing.

Dated this 17th day of September, 1917.

HENRY D. WILLIAMS,
WILLIAM H. KENYON,
ODELL W. MCCONNELL,
Solicitors for Plaintiffs.
THOS. T. SHERIDAN,
J. EDGAR BULL,
J. BRUCE KREMER,
Solicitors for Defendant.

Approved:
BOURQUIN, J.

Filed Sept 20, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

In Equity.

ORDER.

IT IS HEREBY ORDERED, that after the filing of the petition for allowance of appeal and the procuring of the order allowing appeal and the filing of the assignment of errors and the giving of bond on appeal, the defendant may have to and including the 1st day of November, 1917, in which to file statement of the evidence and proceedings to be a part of the record on appeal, the same to be then submitted for the ap-

proval of this court as the statement of the evidence and proceedings on appeal and its praecipe indicating the portions of the record to be incorporated into the transcript on such appeal, said praecipe to include statement so to be settled by the court.

Dated this 20th day of September, 1917.

GEO. W. BOURQUIN,
Judge of the District Court of the United States, for the District of Montana.

CONSENTED TO this 20th day of September, 1917.

HENRY D. WILLIAMS,
WILLIAM H. KENYON,
LINDLEY M. GARRISON,
ODELL W. MCCONNELL,
Solicitors for Plaintiffs.

FILED Sept. 20, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

ORDER OF TRANSMISSION OF PHYSICAL EXHIBITS TO FEDERAL COURT.

And now, on this 20th day of September, 1917, on the application of defendant's solicitor,

IT IS ORDERED by the court that the physical exhibits in the above styled cause may be by the Clerk removed from the records of this court and transmitted to the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, to be used upon the hearing of the appeal in that court.

GEO. M. BOURQUIN,
Judge.

FILED Sept. 20, 1917.

GEO. W. SPROULE, CLERK.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE AND SUPERIOR MINING COMPANY, formerly Butte and Superior Copper Company, Limited,

Defendant.

In Equity.

ORDER EXTENDING TIME FOR FILING RECORD AND DOCKETING CASE.

For good cause shown, IT IS HEREBY ORDERED that the defendant may have to and including the 17th day of November, 1917, within which to file the record on appeal in the above styled case in the United States Circuit Court of Appeals for the Ninth

Circuit, and the time for so filing said record and docketing said cause is hereby extended to that time.

Dated this 20th day of September, 1917.

GEO. M. BOURQUIN,

Judge of the District Court of the United States for the District of Montana.

Approved:

HENRY D. WILLIAMS,
ODELL W. MCCONNELL,
For Plaintiffs.

FILED Sept. 20, 1917.

GEO. W. SPROULE, Clerk.

In the District Court of the United States, for the District of Montana.

MINERALS SEPARATION, LIMITED, MINERALS SEPARATION AMERICAN SYNDICATE, LIMITED, and MINERALS SEPARATION NORTH AMERICAN CORPORATION,

Plaintiffs,

vs.

BUTTE & SUPERIOR COPPER COMPANY,

Defendant.

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto that in the preparation of a statement of the case to be settled by the court and in preparation of the record on appeal herein, the full testimony of the witnesses in question and answer form shall be embodied in said record on appeal instead of a narrated statement of all the testimony, or a portion thereof, and that in the preparation of a statement herein the full record of the testimony in question and answer form shall be embodied in said statement in lieu of narrated testimony and that the full proceedings herein as taken down by the official stenographer dur-

ing the course of the trial shall constitute the record upon the statement of the case and shall constitute that portion of the record on appeal from any judgment, order or decree rendered in the above cause.

This stipulation is made in the light of the technical features of the case and in the light of the various questions arising from the testimony and this stipulation is further made subject to the consent of the judge of the above entitled court.

Dated this 16th day of May, 1917.

THOMAS F. SHERIDAN,
W. A. SCOTT,
J. BRUCE KREMER,
L. P. SANDERS,
ALF. C. KREMER,
Attorneys for Defendant.
ODELL W. MCCONNELL,
HENRY D. WILLIAMS,
WILLIAM H. KENYON,
LINDLEY M. GARRISON,
Attorneys for Plaintiffs.

Consented and agreed to

BOURQUIN, Judge.

FILED May 17, 1917.

GEO. W. SPROULE, Clerk.
By H. H. WALKER, Deputy.